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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73 1595

COLONIAL PIPELINE COMPANY,

Appellant

versus

E. LEE AGERTON, COLLECTOR OF REVENUE,

Appellee

On Appeal from the Supreme Court of the State of Louisiana

JURISDICTIONAL STATEMENT

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No.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, First Circuit, is reported at 275 So.2d 834. The opinion of the Supreme Court of Louisiana, reversing the judgment of the Court of

Appeal, is reported at 289 So.2d 94. The opinions of the Court of Appeal and the Supreme Court, the order denying rehearing and the notices of appeal are set fourth in the Appendix *infra*.

JURISDICTION

This action was brought by appellant, Colonial Pipeline Company, under the authority of Louisiana Revised Statutes 47:1576, for the recovery of taxes assessed and paid under protest. Appellant alleged that the Louisiana corporation franchise tax (La. Rev. Stat. 47:601, et seq as amended by Act No. 325 of the 1970 Legislature) as applied to the facts of this case, is repugnant to Article I, Section 8, Clause 3 of the Constitution of the United States (the Commerce Clause) and therefore invalid. The Louisiana District Court and the Louisiana Court of Appeal, First Circuit, decided the question in favor of appellant and entered judgments directing that the taxes be refunded. The Supreme Court of Louisiana reversed the judgment of the lower courts and held that Louisiana can validly levy an excise tax upon the privilege of engaging in interstate business in Louisiana in a corporate form.

Appellant appeals from the final order and judgment of the Supreme Court of Louisiana entered February 18, 1974, denying appellant's application for rehearing and its judgment entered January 14, 1974, reversing the judgment of the Louisiana Court of Appeal.

Notices of appeal were filed on March 28, 1974 in both the Supreme Court of Louisiana and the Louisiana 19th Judicial District Court.

The validity of a state statute on the grounds of its being repugnant to the Constitution of the United States was drawn in question by the proceedings below, and the decision was in favor of the validity of the statute. Therefore, jurisdiction to review the judgment of the Louisiana Supreme Court, the highest court of the State of Louisiana, by appeal is conferred on this court by 28 U. S. Code, Section 1257(2) and 2101(c). That such jurisdiction exists in the circumstances of this case is sustained by this Court's decision in: *Railway Express Agency v. Virginia*, 347 U. S. 359, 98 L.Ed. 757, 74 S.Ct. 558 (1954) and *Warren Trading Post v. Arizona State Tax Commission*, 380 U. S. 685, 14 L.Ed.2d 165, 85 S.Ct. 1242 (1965).

STATUTES INVOLVED

Sections 401, 601 (before and after its amendment by Act No. 325 of the 1970 Legislature), 606, 1501, 1561 and 1641 of Title 47 of the Louisiana Revised Statutes are set out verbatim in the Appendix, *infra*.

QUESTIONS PRESENTED

1. Whether this Court's decisions in *Spector Motor Service v. O'Connor*, 340 U. S. 602, 95 L.Ed. 573, 71 S.Ct. 508 (1951), *Railway Express Agency v. Virginia*, 347 U. S. 359, 98 L.Ed. 757, 74 S.Ct. 558 (1954) and *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U. S. 389, 95 L.Ed. 436, 72 S.Ct. 424 (1952) are still viable delineations of the limitations imposed by the Commerce Clause of the Federal Constitution upon the power of the states to tax interstate commerce.

2. Whether a corporation engaged exclusively in the interstate transportation of petroleum products in and through

a state, having no local activities except purely incidental to its interstate business, may be constitutionally subjected to Louisiana's corporation franchise tax.

3. Whether Louisiana, which admittedly cannot deny or refuse an out of state corporation the right to engage in interstate business within the state in corporate form, may levy an excise tax upon the privilege of engaging in interstate business in corporate form.

4. Whether the levy of the state excise tax upon the privilege of engaging in interstate business in corporate form, coupled with summary and drastic enforcement and collection procedures which authorize complete cessation of the interstate business, is the equivalent of a state license to engage in interstate commerce and thus prohibited by Article I, Section 8, Clause 3 of the Constitution.

STATEMENT

This is an action for a refund of corporate franchise taxes paid under protest by a corporation engaged exclusively in interstate commerce in Louisiana. It is a sequel to *Colonial Pipeline Company v. Mouton, Collector of Revenue*, 228 So.2d 718, writ refused 231 So.2d 393 (La. 1969).

Subsequent to that case, the Louisiana Legislature amended and reenacted Louisiana Revised Statues 47:601, the franchise tax statute at issue in both cases. That statute is set out verbatim in the Appendix. Colonial is a foreign corporation with its principal office located in Atlanta, Georgia. It has constructed and owns and operates a pipeline system extending from Houston, Texas to the New York Harbor area,

together with various lateral lines, pumping stations, tank farms, and other related facilities. It has been stipulated that all such facilities are used solely and only for the interstate transportation of refined petroleum products.

This pipeline system consists of 1991 miles of main line and 1534 miles of "stub" line, or a total of 3525 miles, of which 258 miles are located in Louisiana.

Colonial is a common carrier of refined petroleum products under the jurisdiction of the Interstate Commerce Commission. Colonial owns none of the products which it transports; all such refined petroleum products are owned by others and are transported at rates fixed in a tariff approved by the Interstate Commerce Commission.

The entire pipeline is operated by means of computerized equipment located in the Atlanta office. All relay stations and booster stations are monitored from Atlanta. The only Colonial personnel stationed in Louisiana during the tax years in question were operators and mechanics required to maintain and operate the pipeline through Louisiana. There were no Colonial administrative personnel in Louisiana during the tax years in question and a division office which formerly was operated in Louisiana was moved from the state prior to the tax years in question.

On May 9, 1962, Colonial qualified to do interstate business in Louisiana and has remained so qualified since that time. The state courts determined that the business actually carried on by Colonial has, at all times, been exclusively interstate commerce and all of its facilities have been utilized ex-

clusively in furtherance of its interstate business. Colonial accepts certain deliveries of refined petroleum products from refineries in the Lake Charles, Louisiana area and in the Baton Rouge, Louisiana area. These products are all destined for movement out of Louisiana. Colonial also delivers certain refined petroleum products from Texas refineries to the Baton Rouge and Opelousas, Louisiana stations for use in those areas but Colonial does not engage in any intrastate movement of refined petroleum products in Louisiana. The state concedes that there is no question but that anything and everything done by this corporation since its original entry into the state of Louisiana has been purely incidental to its business as a common carrier engaged soley in interstate commerce.

Colonial has paid and is paying Louisiana some $100,000.00 annually in income taxes based upon the apportionment formula in Louisiana's income tax law; the company is paying in addition, some $370,000.00 in state and local ad valorum taxes on property owned by it in Louisiana.

In the first *Colonial* case, the Louisiana Court of Appeal held that the Louisiana corporation franchise tax (L.R.S. 47:601, et seq) was levied upon the privilege of engaging in business in Louisiana; since Colonial was engaged exclusively in interstate business, the court held that the tax could not be constitutionally applied to Colonial. The Supreme Court of Louisiana declined to review that judgment, declaring that there was "no error of law in the judgment" (231 So.2d 393). In 1970, the Louisiana Legislature adopted an amendment to Section 601 and thereafter the State Collector of Revenue again concluded that Colonial was liable for corporation franchise taxes.

Colonial paid those taxes for the years 1970 and 1971 under protest and then filed this suit for refund, in accordance with the provisions of state law. For 1970 the amount of tax assessed is $80,835.02[1] and for 1971 the amount is $69,884.78.

The Louisiana District Court and Court of Appeal, First Circuit, both held that the 1970 amendment did not change the operating incidence of the corporation franchise tax and that it could not be constitutionally applied to Colonial.

The Supreme Court of Louisiana granted a writ of review and held that the operating incidence of the tax even before the 1970 amendment was upon the privilege of engaging in business in Louisiana **in corporate form** rather than simply upon the privilege of engaging in business in Louisiana. The Supreme Court of Louisiana handed down its decision reversing the judgment of the Louisiana Court of Appeal on January 14, 1974, and that court handed down its final order and judgment denying appellant's application for rehearing on February 18, 1974. Notices of appeal were filed on March 28, 1974 in both the Supreme Court of Louisiana and the Louisiana 19th Judicial District Court.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents substantial constitutional questions involving the extent of the taxing power of the states over foreign corporations engaged exclusively in interstate transportation. In *Spector Motor Service v. O'Connor*, 340 U. S. 602, 95 L.Ed. 573, 71 S.Ct. 508 (1951) and *Railway Express*

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[1] The Louisiana Supreme Court held that Colonial was liable only for the minimum tax for 1970 and reduced this amount.

Agency v. Virginia, 347 U.S. 359, 98 L.Ed. 757, 74 S.Ct. 558 (1954) (the first *Railway Express* case) this Court made it plain that Article I, Section 8, Clause 3 of the Constitution of the United States prohibits a state franchise tax, the operating incidence of which falls upon the privilege of carrying on exclusively interstate transportation in and through the state. In *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, 96 L.Ed. 436, 72 S.Ct. 424 (1952), this Court made it equally plain that it would not permit the states to "carve out" an "incident from the integral economic process of interstate commerce" as the operating incidence of an excise tax, for to do so would result in "a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause."

The decision of the Supreme Court of Louisiana sustaining the Louisiana excise tax levied upon Colonial's franchise for the privilege of carrying on exclusively interstate transportation in the state **in corporate form** is but the latest in a series of state court decisions maintaining successively more direct state levies upon interstate commerce. This appeal raises for determination just how far the states may constitutionally go in taxing exclusively interstate business through the device of fragmentizing the "doing business" concept, and by a tax levied on one fragment of the entire economic process of doing interstate business, impose a privilege, license or franchise tax on the interstate business itself.

We take it as established that appellant's **right** to engage in the intersate transportation business in Louisiana is not subject to that state's grant or denial, and thus not subject to that state's taxing power. *Nippert v. City of Richmond*,

327 U.S. 416, 90 L.Ed. 760, 66 S.Ct. 586 (1946). We further take it as established that appellant's **right** to engage in interstate business in Louisiana in corporate form is not subject to that state's grant or denial, and that a license, privilege or occupation tax levied upon the privilege of engaging in interstate business is invalid. *Spector Motor Service, supra.* Nonetheless, Louisiana has declared in effect: while we acknowledge that we cannot levy a tax upon a corporation's franchise to do interstate business, we can and do tax the corporation's franchise to do such business **in the corporate form.** To accomplish this, Louisiana has reinterpreted its franchise tax statute, redesignating the operating incidence of tax as a tax on doing business in corporate form (representing the taxable local incident) as a means of avoiding the "doing business" concept; thus further fragmenting it.

We say that Louisiana has "reinterpreted" its franchise tax, for in 1969, the Louisiana courts construed the Louisiana corporation franchise tax to be an exaction levied upon the privilege of doing business in Louisiana and, citing *Spector Motor Service, supra*, held that the tax could not be constitutionally applied to Colonial because Colonial was engaged exclusively in the interstate transportation of refined petroleum products in and through that state. *Colonial Pipeline Company v. Mouton*, 228 So.2d 718, writs refused 231 So.2d 393 (La. 1969). After the Louisiana Legislature adopted an amendment to the statute[2] which did not change the nature or incidence of the franchise tax,[3] the Supreme Court of Lou-

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[2] Act No. 325 of 1970, amending L.R.S. 47:601; set out in the Appendix, *infra*.

[3] There was dispute as to the effect of the 1970 amendment but the Louisiana Supreme Court held that assuming there has been no essential

isiana held in the present case that the state could constitutionally tax Colonial's interstate transportation business because it was not taxing "the general privilege of doing interstate business" but the privilege of doing that business in corporate form, predicating the tax upon privileges enjoyed by corporations.

The basis of the state court holding is summed up in the following language of the opinion:

> "The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing business in the State, does not in our view detract from the fact that the local incident taxed is the **form of doing business** rather than the business done by that corporation. And it is our view that the local incident is real and sufficiently distinguishable, so that taxation thereof does not, under the controlling decisions of the United States Supreme Court, violate the Commerce Clause." (Appendix, page 40; emphasis by the Court)

The Louisiana Supreme Court, as well as the highest courts of other states, has seized upon certain decisions of this Court as signifying a retreat from the clear holdings of cases such as *Spector Motors, Railway Express*, and *Memphis Steam, supra*. The state court here concludes that the following decisions of this Court demonstrate "inroads into the tax immune status of exclusively interstate activity." (Appendix, p. 37).

Memphis Natural Gas Company v. Stone, 335 U.S. 80,

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change in the statute it would nevertheless hold as it did, not withstanding the earlier contrary decision of the Louisiana Court of Appeal in which writs were refused. See Appendix, p. 32.

92 L.Ed. 1832, 68 S.Ct. 1475 (1948), although decided prior to *Spector Motors*, is one of those cases frequently cited. That case involved a gas pipeline company which actually made sales of its products in Mississippi. This Court held that it was bound by the determination of fact made by the Mississippi Supreme Court that certain of the corporation's activities in Mississippi were of a local nature, sufficiently separate and apart from the flow of commerce to support state taxation. The tax involved in *Memphis Gas* was measured by capital stock, basically therefore, a property measure, similar to the "in lieu" tax subsequently approved in *Railway Express, infra*.

Here, appellant is a common carrier of refined petroleum products, operating under the jurisdiction of the Interstate Commerce Commission. Colonial makes no sales of any sort in Louisiana; its business is purely interstate transportation of refined petroleum products for others at tariffs approved by the Interstate Commerce Commission. As was the fact situation in *Ozark Pipe Line Corp. v. Monier*, 266 U.S. 555, 69 L.Ed. 439, 45 S.Ct. 184 (1925), all of Colonial's activities within the state of Louisiana are admittedly, ". . . exclusively in furtherance of its interstate business, and the property itself, however extensive or of whatever character, * * * likewise devoted only to that end. They were the means and instrumentalities by which that business was done and in no proper sense constituted, or contributed to, the doing of a local business." (266 U.S. at 565, 69 L.Ed. at 443, 45 S.Ct. at 184).

In addition, unlike the tax in *Memphis Gas*, the Louisiana franchise tax includes "surplus, undivided profits, and borrowed capital" in the tax base, as a consequence of which

stocks and bonds physically located outside the State of Louisiana are includible in the allocation formula. *Kansas City Southern Railway Co. v. Reily*, 242 La. 235, 135 So.2d 915, appeal dismissed, 370 U.S. 289, 8 L.Ed.2d 501, 82 S.Ct. 1561 (1962).

Another decision relied upon by the state court is *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 3 L.Ed.2d 421, 79 S.Ct. 357 (1959), in which this Court sustained a properly apportioned state net income tax levied upon a corporation engaged in interstate commerce. Louisiana and other states have used this decision as justification for disregarding *Spector Motor Service*, and for approving state franchise tax levies upon exclusively interstate business, despite the positive recognition in *Northwestern* that *Spector Motor Service* "was not a levy on net income, but an excise or tax placed on that franchise of a foreign corporation engaged 'exclusively' in interstate operations." Moreover, Colonial pays and has not complained about the levy of the substantial income tax imposed upon net income by Louisiana, but it does complain about paying both, particularly when appellant is also paying substantial amounts of state and local ad valorem taxes on property owned by it in Louisiana.

Railway Express Agency v. Virginia, 358 U.S. 434, 3 L.Ed. 2d 450, 79 S.Ct. 411 (1959) (the second *Railway Express* case) is also taken by the state court as an erosion of this Court's prior holdings in *Spector*, and in the earlier case of *Memphis Steam Laundry Cleaner, Inc. v. Stone*, all despite the refusal of this Court in *Memphis Steam* to permit fragmentation of the "doing business' concept:

"If the Mississippi tax is imposed upon the privilege of

soliciting interstate business, the tax stands on no better footing than a tax upon the privilege of doing interstate business." (342 U.S. at p. 393, 96 L.Ed. at p. 440)

To paraphrase here "if the Louisiana tax is imposed upon the conduct of interstate business in corporate form," then it stands on no better footing than a tax upon the privilege of doing Colonial's interstate business. This state court reliance upon *Railway Express* as representing a departure from these fundamental principles is obviously misplaced. The significant distinction between the tax in *Railway Express* and the Louisiana franchise tax is that the Virginia tax was levied *in lieu* of all other taxes on intangible property and in lieu of property taxes on the rolling stock of the corporation. In sustaining the Virginia tax, this Court was careful to point out that it was not "denominated a license tax laid in the 'privilege of doing business in Virginia,' " nor was it "in addition to the property tax," nor was it "a condition precedent to its engaging in interstate commerce in the Commonwealth." It was, in substance, a tax on property, permissible under a long line of cases approving state property taxes as an indirect levy.

The Louisiana tax does not purport to be *in lieu* of any of the other taxes which appellant is paying; it is by any name or interpretation, still a license tax on the privilege of doing business, and as we shall hereafter indicate, it is an effective condition precedent to Colonial's engaging in interstate commerce in Louisiana.

General Motors Corp. v. Washington, 377 U.S. 436, 12 L.Ed.2d 430, 84 S.Ct. 1564 (1964), likewise cited as support for fragmentation of the "doing business" concept, involved a state tax levied upon the corporation and measured by Gen-

eral Motors' substantial gross wholesale sales of motor vehicles in the state. The tax was sustained because of the company's extensive and undisputed local activity in connection with those sales, which activity was sufficiently separate and distinct from the flow of interstate commerce to support the tax. As pointed out above, Colonial here is a common carrier of refined petroleum products, owns no products, and makes no sales in Louisiana.

The trend among the states has been one of steady expansion of this Court's prior holdings and a correspondingly increasingly heavy burden upon interstate commerce, as is illustrated by the state court decisions discussed below.

The Supreme Court of Oklahoma initiated the erosion of this Court's holding in *Spector Motor Service* with[illegible] month after this Court announced its opinion. On April [illegible] 1951, the Oklahoma court decided *Great Lakes Pipe Line Co. v. Oklahoma Tax Commission*, 251 P.2d 655 (Okla. 1951). That case involved an interstate pipeline and an Oklahoma corporation license tax levied "as a condition of existing or doing or attempting to do business in this State measured by capital used, invested or employed in the State." The state court found as a fact that Great Lakes "definitely engaged in intrastate commerce during the period for which it was taxed" (231 P.2d at 659). The opinion, however, contains language to the effect that the tax is being levied not only on the basis of the intrastate commerce but by reason of some fancied distinction between doing business and doing business in a corporate capacity. The Oklahoma court distinguished *Spector Motor Service* as follows:

"In that case the right to exist was not taxed, but only

the privilege of carrying on or doing business in the state of Connecticut . . ." (231 P.2d at 661)

Apparently no attempt was made to secure this court's review of the Oklahoma decision and the finding that the taxpayer was engaged in intrastate as well as interstate business was sufficient to support the levy of the tax under *Spector Motor Service* and prior decisions of this court.

The "inroads" approach of the Oklahoma decision was adopted by the Tennessee Supreme Court in *Texas Gas Transmission Corp. v. Atkins*, 270 SW2d 384 (Tenn. 1954). In that case, the taxpayer did intrastate business in Tennessee; it made sales of gas in the state of Tennessee as well as purchases of gas in that state. In addition, the company had voluntarily qualified to do **intrastate** business in Tennessee thereby gaining rights and privileges which it otherwise would not have acquired. The Tennessee court, however, concluded that the excise tax in question was levied upon the right to do business in Tennessee in corporate form and distinguished *Spector Motor Service* on that basis. Again, the state court fragmented the doing business concept, seizing upon the privilege of engaging in business in corporate form in the state, together with admitted local activities involved in the sale and purchase of gas and the voluntary qualification to do intrastate business as justification for the tax. Again, apparently no attempt was made to secure this court's review of that opinion; but, in any event, the case is clearly distinguishable, both under the facts and the law, from the instant case.

The case of *Roadway Express, Inc. v. Director*, 50 N.J. 471, 236 A.2d 577 (1967, appeal dismissed), 390 U.S. 745, 20 L.Ed. 276, 88 S.Ct. 1443 (1968) involved a motor freight truck-

ing company conducting interstate commerce involving substantial local activities and property. The New Jersey business corporate tax was levied upon all corporations "in lieu of other State, county or local taxation upon or measured by intangible personal property." The measure of the tax was allocated net worth plus allocated net income. New Jersey did not levy an income tax and the state court commented that the business corporation tax has all the attributes of a direct levy on income (236 A.2d at 582). The New Jersey Supreme Court sustained the validity of the tax upon the basis of its "in lieu" features and upon the corporation's substanial local activities, specifically, its vehicles which were registered elsewhere did not pay license fees to New Jersey but made extensive use of the state's highway system and the vehicles and cargoes enjoyed the protection of the state police. The court commented, however, after reviewing this Court's recent cases, that the minority view of *Spector Motor Service* has now become this Court's general view (236 A.2d 585).

This Court's dismissal of the appeal in the New Jersey case for want of a substantial federal question is fully supported by *Spector Motor Service* and other cases predicated upon the substantial local activities of the corporation and more particularly the "in lieu" features of the tax which this Court had approved in the second *Railway Express Agency* case in 1959. The language of the state court opinion, however, indicates a tendency to ignore the Commerce Clause as a viable restraint upon the state's taxing power.

Mid-Valley Pipeline Co. v. King, 431 S.W.2d 277 (Tenn. 1968); appeal dismissed, 393 U.S. 321, 21 L.Ed.2d 517, 89 S.Ct. 556 (1969) involved an excise tax levied upon allocated net

earnings and a franchise tax levied upon capital stock surplus and undivided profits. The Tennessee Supreme Court sustained the application of the tax to an interstate common carrier of crude oil citing the New Jersey case and the earlier Tennessee case of *Texas Gas Transmission Corp. v. Atkins, supra.* The court held that local incidents or activities may be a basis for a franchise or excise tax, measured by properly apportioned net income of a foreign corporation engaged solely in interstate commerce, provided the local activities can be separated from interstate commerce. The court further held that the company has and is employing or owning capital or property in Tennessee and exercising its corporate franchise within Tennessee and that it maintains its rights of way and other valuable properties located in the state in its corporate capacity and further that it has and is using Tennessee courts to vindicate its rights. The Tennessee court held that these local activities, although incidental to the conduct of interstate commerce are taxable under the decisions of this court.

While the court did not specifically note that point, the Tennessee tax apparently had "in lieu" features since it was levied upon foreign corporations doing business in the state without qualifying to do business "as a recompense for the protection of their local activities and as compensation for the benefits they receive from doing business in Tennessee."

As noted above, this Court dismissed the appeal for want of a substantial federal question.

While each of these state court decisions may be justified upon the peculiar facts and particular state statutory provisions, they illustrate the continuing "inroads" into the heretofore generally accepted excise tax immunity of businesses

engaged exclusively in interstate commerce. The Louisiana Supreme Court decision is the latest and most far-reaching of these decisions. We submit that the time has come for this Court to re-affirm the Commerce Clause as the intended safeguard against the free movement of goods between the states. In the final analysis, if the state cannot exact a levy as a condition of commencing interstate business, it ought not to be permitted, under the guise of fragmentation to exact a levy which must be paid as a requirement for continuing the conduct of an interstate business in the state.

We suggest to the Court that the Louisiana corporation franchise tax, although couched in more sophisticated grammar, is actually the equivalent of the Kentucky license tax upon foreign corporations which this Court struck down in *Crutcher v. Kentucky*, 141 U.S. 47, 35 L.Ed. 649, 11 S.Ct. 851. Louisiana seeks to justify its tax by contending it is not a tax upon the privilege of doing interstate business, but is a **tax upon foreign corporations doing interstate business.**

A few references to the Louisiana Supreme Court's construction of the tax levy will make this plain:

> "The thrust of the statute is to tax not the interstate business done in Louisiana by a foreign corporation, **but the doing of business in Louisiana in a corporate form** . . ." (Appendix, p. 33; emphasis supplied)

> ". . . (The statute) taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this State, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana,

> and the corporation's use of its corporate form to do business in the State." (Appendix, p. 39)

> ". . . the local incident taxed is the **form of doing business** rather than the business done by the corporation . . ." (Appendix, p. 40; emphasis by the Court)

In *Crutcher v. Kentucky, supra*, the state sought to sustain its license tax upon foreign corporations doing interstate business upon the grounds that the tax was non-discriminatory and levied upon local corporations as well. This Court held:

> ". . . **to carry on interstate commerce is not a franchise or a privilege granted by the state**; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying out their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.
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> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it." (141 U.S. at 58, 35 L.Ed. at 652)

See also *International Text-Book Co. v. Pigg*, 217 U.S. 91, 107, 54 L.Ed. 678, 685, 30 S.Ct. 481 (1910); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 66 L.Ed. 239, 42 S.Ct. 106; and *Lilly & Co. v. Sav-On-Drugs, Inc.*, 366 U.S. 276, 6 L.Ed.2d 288, 81 S.Ct. 1913 (1961).

Although the Louisiana tax is couched in terms of the

levy of a corporation franchise tax, it is the equivalent of a license tax because the state can completely shut off the flow of commerce in connection with the levy and collection of the tax. As pointed out above, the payment of the tax is a condition precedent to the continuing conduct of interstate business in Louisiana. Under these circumstances, it should have no greater standing than the exaction of a levy as a condition of commencing interstate business in the state.

Failure to pay the Louisiana tax is a criminal offense (La. Rev. Stat. 47:1641); enforcement of the tax liability may be by summary process, distraint and injunction (La. Rev. Stat. 47:1501, 47:401, 47:1561).

Had not Colonial paid the franchise tax under protest, the state could have, without notice or assessment, instituted summary proceedings and the alleged tax would have operated as a "lien, privilege and mortgage on all of the property" of Colonial in the State of Louisiana. In addition, the state could have, at its option, used the drastic remedy of distraint and could have demanded and taken possession of appellant's property in Louisiana. Under these circumstances, the holding of the Court of Appeal in *Ideal Cement Co. v. United Gas Pipe Line*, Fifth Circuit, 1960, 282 F.2d 574 (cert. denied, 369 U.S. 837, 7 L.Ed.2d 842, 82 S.Ct. 863), is apropos here:

> "• • • What the City has done in this case, by the words of its ordinance, is to make the procurement of a license a precondition of engaging in interstate commerce within its jurisdiction.
> "Nor is the evil attending license taxes on interstate commerce merely a question of labels. Provisions for the levy of license taxes are ordinarily accompanied by summary collection procedures. So here, the Alabama Code provides for injunctions against firms who fail to pay municipal license taxes on time. Thus, the effect of nonpayment of a license tax is not the usual slight disruption of commerce which may follow a levy on a delinquent taxpayer's property. Rather, interstate commerce is brought to an immediate halt by means of the injunctive remedy. Moreover, doing business without a license will bring down the violator extreme criminal sanctions."

In *Crutcher v. Kentucky, supra*, the state's tax was an outright license tax imposed upon foreign corporations who wished to do business in Kentucky. The Louisiana statute as construed by the state's highest court is a franchise tax imposed upon foreign corporations who wish to do interstate business in corporate form[4] in Louisiana. Louisiana cannot deny appellant's right to do business in the corporate form in Louisiana. *Crutcher v. Kentucky* holds that the power of Congress over interstate commerce is as absolute as it is over foreign commerce and points out that the prerogative, the responsibility and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies, or foreign individuals with whom they may have relations of foreign commerce belong to the government of the United States and not to the governments of the several states. Further, *Crutcher* holds: "and the same thing is exactly true with respect to interstate commerce as it is with respect to foreign commerce." (141 U.S. at 58)

Thus it is plain that Colonial's privilege of engaging in interstate transportation in and through Louisiana in corporate form flows from the United States, not the state.

Tests or questions propounded in earlier decisions of this

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[4] We take it as self-evident that a corporation cannot do business, interstate or otherwise, in other than its corporate capacity.

Court and alluded to by the State court become pertinent: "whether the State has exerted its power in proper proportion to appellant's activities within the State and to appellant's consequent enjoyment of the opportunities and protections which the State has afforded." (*General Motors v. Washington*, *supra*, 377 U.S. at 441); "the controlling question is whether the State has given anything for which it can ask return." (*Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 85 L.Ed. 267, 61 S.Ct. 246 (1940))

While Colonial owns property in Louisiana which receives protection from state and local authorities, Colonial pays substantial ad valorem and income taxes for whatever "opportunities and protections" flow from property ownership.

Under *Crutcher v. Kentucky, supra*, to carry on interstate commerce in corporate form is not a right or privilege granted by the state; thus Louisiana has not afforded to appellant the very "operating incidence" upon which it seeks to levy the tax. **And since Louisiana has not given appellant the right or privilege of doing interstate business in corporate form, the state cannot ask a return for it.**

As construed by Louisiana's highest court, the state tax is levied upon appellant's privilege of carrying on interstate commerce in corporate form. That is not a privilege bestowed by Louisiana and the practical result of the statute is to require out-of-state corporations to take out a license for carrying on interstate commerce.

While great respect is due the determination of the operating incidence of a state tax, *Memphis Natural Gas v. Stone, supra*, it is not conclusive upon this Court, which must

consider and determine the practical effect of the tax upon interstate commerce, first *Railway Express* case, and second *Railway Express* case, *supra*.

The practical operating result of the Louisiana tax is a privilege, license or occupation tax upon appellant's interstate transportation business in circumstances where Louisiana does not contribute to the furtherance of that interstate business, and under circumstances where Louisiana can shut off the flow of interstate commerce through collection procedures which compel a cessation of Colonial's interstate business in the absence of payment.

CONCLUSION

For the reasons stated, these important constitutional issues warrant this Court's consideration of the growing extension of state taxation upon interstate commerce culminating in Louisiana's holding that it is constitutionally permitted to exact a tax for the privilege of doing interstate business in corporate form in Louisiana. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

R. Gordon Kean, Jr. and

John V. Parker of
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Post Office Box 1588
Baton Rouge, Louisiana 70821

Attorneys for Colonial Pipeline Company

PROOF OF SERVICE

The undersigned, one of the attorneys for Colonial Pipeline Company, plaintiff-appellant herein and a member of the Bar of the Supreme Court of the United States hereby certifies that on the _____ day of April, 1974, I served a copy of the foregoing Jurisdictional Statement on Joseph N. Traigle, successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, by mailing a copy of the same in an addressed envelope with postage prepaid to his counsel of record, Whit M. Cook II, State of Louisiana, Department of Revenue, Legal Division, Post Office Box 201, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this _____ day of April, 1974.

R. Gordon Kean, Jr.

APPENDIX A

OPINIONS BELOW

MONDAY JAN 14 1974

SUPREME COURT OF LOUISIANA

No. 53,552

COLONIAL PIPELINE COMPANY,
Plaintiff-Respondent

versus

E. LEE AGERTON, COLLECTOR OF REVENUE,
Defendant-Relator

Writ of Review to the Court of Appeal, First Circuit

CALOGERO, Justice.

We granted this writ, 278 So.2d 201 (La. 1973) upon the application of the Louisiana Collector of Revenue, who complains of an adverse decision of the 19th Judicial District Court, affirmed by the First Circuit Court of Appeal, holding that R.S. 47:601 as amended by Act No. 325 of 1970 is unconstitutional as a violation of the Commerce Clause of the United States Constitution.[1]

R.S. 47:601 imposed a corporation franchise tax which the Collector levied on plaintiff-relator, Colonial Pipeline Company, for the years 1970 and 1971. Colonial paid the taxes under protest, then instituted this action for recovery.

The legal issue involved in the matter presently before us is more readily understood by reviewing Colonial's disputes with the Collector of Revenue starting in 1963.

Colonial Pipeline Company is a common carrier of liquefied petroleum products. Its chief physical asset is a pipeline system stretching from Houston, Texas, to the outskirts of

[1] U.S. Const. art. 1, §8, cl. 3.

New York City, a total of some 3,400 miles. Through this line, Colonial pumps approximately one million gallons of petroleum products per day. Of the total pipeline mileage owned by Colonial, approximately 258 are located in the State of Louisiana (in 1963 there were 217 miles of pipeline located in Louisiana.). Over this distance, there are several booster pumping stations which keep the products flowing at a sustained rate, and at various collection points (chiefly Lake Charles and Baton Rouge) there are tank storage facilities. To maintain and help operate this line, Colonial keeps approximately 25-30 employees in the State. These consist of various classifications of mechanics, electricians, and other workers whose chief duties are to inspect the line and perform maintenance chores. There were no administrative offices or personnel in the State during 1970 and 1971, although prior to this time, including the year 1963, Colonial had maintained a Division office in Baton Rouge.

In its operation in Louisiana, Colonial has apparently done no intrastate shipping of petroleum products. Loads or batches are picked up outside the state and deposited within the state, and picked up within the state for transportation elsewhere. There are apparently no facilities in the state, except for those in Lake Charles and Baton Rouge, for injecting or withdrawing products into or from the line.

On Ma[illegible], 1962, Colonial, a Delaware corporation with principle offices in Atlanta, Georgia, qualified to do business in Louisiana and has remained qualified since that time.

In 1963 the Collector imposed the Louisiana franchise tax (R.S. 47:601, the latest amendment thereof in 1963 being by Act 437 of 1958) on Colonial's activities for the year 1962. Colonial paid the tax, then successfully prosecuted a lawsuit for a refund. The Court of Appeal in that first lawsuit affirmed

a district court judgment favorable to Colonial,[2] holding that Colonial was engaged in interstate commerce, and that the Collector's interpretation of R.S. 47:601 which authorized the imposition of the tax was unconstitutional as a violation of the Commerce Clause of the United States Constitution. This Court refused to grant writs.[3]

Following that 1969 decision the Louisiana Legislature by Act 325 of 1970 amended R.S. 47:601 in an apparent effort to cure any Constitutional deficiency in the statute and to facilitate the legal imposition of Louisiana's cooperation franchise tax upon corporations such as Colonial.

There followed a renewed effort to impose the tax, this time under the amended statute.

Prior to the 1970 amendment the statute had read as follows:

R.S. 47:601 Imposition of tax

> Every domestic corporation **and every foreign corporation**, exercising its charter, authorized to do or doing business in this state, or owning or using any part or all of its capital or plant in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter, **shall pay a tax** at the rate of one dollar and 50/100 ($1.50) for each one thousand dollars ($1,000.00), or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than ten dollars ($10.00) in any case. **The tax levied herein is due and payable for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter**

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[2] Colonial Pipeline Co. v. Mouton, 228 So.2d 718 (La.App. 1st Cir. 1969).
[3] 255 La. 474, 231 So.2d 393 (1970).

within this state, or owning or using any part or all of its capital or plant in this state. (Emphasis added)

The amendment by Act 325 of 1970 changed the statute to provide as follows:

R.S. 47:601 Imposition of tax

Every domestic corporation **and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state**, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter **shall pay** an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less then $10.00 per year in any case. **The tax levied herein is due and payable on any one or all of the following alternative incidents:**

(1) **The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form.** The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services of property.

(2) **The exercising of a corporation's charter or the continuance of its charter within this state.**

(3) **The owning or using any part or all of its capital plant or other property in this state in a corporate capacity.**

It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state

to exist as such an organization, **and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation.** The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

As used herein the term "domestic corporation" shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term "foreign corporation" shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any other state, territory or district, or foreign country. (Emphasis added)

The Court of Appeal, holding as it did in the earlier opinion that the statute (prior to the 1970 amendment) as applied to Colonial's activities within the State violated the commerce clause of the United States Constitution, rested the decision essentially upon its construction that the statute imposed a tax simply upon the privilege of doing business in the State of Louisiana. And, of course, State franchise or excise taxes imposed on a corporation for the privilege of doing exclusively interstate business, as a general rule, are invalid.

Colonial argues, and the Court of Appeal in the case presently before us held, that the 1970 amendment to R.S. 47:601 did not change the operating incidents of the franchise tax, that the statute before and after the amendment in this respect is essentially the same.

We disagree. The amended statute omits the primary operating incident, i.e., "the privilege of carrying on or doing business." And, of course, it was the taxing of the privilege of carrying on or doing business which the Court of Appeal

in its earlier decision held was the **exclusive** thrust of the statute. Additionally the amendment specifies three alternative incidents, one of which, "the doing of business within this state in a corporate form," was not clearly incorporated in the prior statute.

Even if we assume, however, that there has been no essential change in the statute, we would still be inclined to hold as we do, notwithstanding the earlier decision of the Court of Appeal to the contrary.

This Court's refusal in 1969 to grant writs upon application by the State in that earlier case, while normally persuasive, does not carry the same weight as a precedent as it would, had that case been decided by this Court after the granting of a writ. See *State v. Theard*, 212 La. 1022, 34 So.2d 248 (1948), *State v. Ardoin*, 197 La. 877, 2 So.2d 633 (1941). This Court is not bound by its refusal of writs, to adopt law expressed in appellate court opinions. Garlington vs. Kingsley, #53,675 on the docket of this Court, handed down this day. ___ So.2d ___ (La. 1973).

The statute as amended in 1970 imposes a corporation franchise tax upon, pertinently, every foreign corporation (and every domestic corporation as well) exercising its charter, authorized to do or doing business, or owning or using any part or all of its capital or plant, in the State of Louisiana. The tax is due and payable on any one or all of three alternative incidents:

a) doing business in Louisiana in a corporate form

b) the exercising of a corporation's charter or the continuance of its charter within the state and

c) the owning or using any part or all of its capital, plant or other property in Louisiana in a corporate capacity.

The thrust of the statute is to tax not the interstate business done in Louisiana by a foreign corporation, but the doing of business in Louisiana in a corporate form, including

> "each and every act, power, right, privilege or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations . . ."

The pertinent Constitutional question is whether, as applied to a corporation whose exclusive business carried on within the State is interstate, this statute violates the Commerce Clause of the United States Constitution.

Memphis Natural Gas Co. v. Stone, 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948), involved facts almost identical to the case at point. There the gas company piped gas across the State of Mississippi. It did no intrastate business in that State. It had no office in that State and no employees other than those necessary to maintain the pipeline. Unlike the case before us Memphis Natural Gas had not qualified to do business in Mississippi. The Mississippi tax statute in question was a franchise or excise tax very similar to our Louisiana statute. The pertinent part of the Mississippi statute provided:

> "It being the purpose of this section to require the payment to the state of Mississippi, this tax for the right granted by the laws of this state to exist as such organization, and enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by the form of such existence."

The Supreme Court of Mississippi concluded the statute did not attempt to tax interstate commerce. That Court said:

> "It is to be seen that **there is no attempt to tax interstate commerce as such, but the levy is an exaction which the State requires as a recompense for its protection of lawful activities carried on in this State by the corpora-**

> **tion, foreign or domestic, activities which are incidental to the powers and privileges possessed by it by the nature of its organization**—here the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of the system throughout the 135 miles of its line in this State." (Emphasis added) 201 Miss. 670, 674, 29 So.2d 268, 270 (1947).

In affirming the Supreme Court of Mississippi, the Supreme Court of the United States said:

> "We think that the State is within its constitutional rights in exacting compensation under this statute for the protection it affords the activities within its border. **Of course, the interstate commerce could not be conducted without these local activities. But that fact is not conclusive. These are events apart from the flow of commerce.** This is a tax on activities for which the state, not the United States, gives protection and the state is entitled to compensation when its tax cannot be said to be an unreasonable burden or a toll on the interstate business." 335 U.S. at 96, 68 S.Ct. at 1483, 92 L.Ed. at 1844 (Emphasis added)

With respect to whether or not the imposition of this tax is an unreasonable burden or toll on interstate business, it is pertinent to note that the Court of Appeal below indicated that R.S. 47:601 imposes a tax upon the total corporate structure of Colonial. It went on to comment that if each State, in which a foreign corporation engaged exclusively in interstate commerce, could impose a franchise tax based on that corporation's total capital stock, surplus, undivided profits and borrowed capital, the tax burden would be such as to literally prevent the corporation's interstate operation.

On the contrary, however, the statute does not impose a tax upon the total corporate structure of Colonial. R.S. 47:606 specifically apportions the capital stock, etc. of any

corporation subjected to the franchise tax according to the property and assets situated or used in Louisiana.[4]

Colonial argues that *Memphis Natural Gas, supra*, is not perfectly analogous and that, at any rate, it is an isolated decision of the United States Supreme Court at odds with the later decision in *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573 (1951). Conversely, the Collector argues that *Spector* does not overrule *Memphis Natural Gas* either expressly or impliedly and that under any condition *Spector* is the isolated decision of the United States Supreme Court and that later decisions of that Court, namely, *General Motors Corp. v. Washington*, 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed.2d 430 (1964), *Railway Express Agency v. Virginia*, 358 U.S. 434, 79 S.Ct. 411, 3 L.Ed.2d 450 (1959), *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed.2d 421 (1959), indicate further inroads (even more significant than that involved in *Memphis Natural Gas*) into the tax immune status of exclusively interstate business activity. It is appropriate therefore that we review those decisions of the United States Supreme Court.

In *Spector*, there was a State tax or excise upon the franchise of a corporation **for the privilege of carrying on or doing business in the State**, measured by net income received from

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[4] **R.S. 47:606 Allocation of taxable capital.**

A. General allocation formula.

For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios:

(1) . . .

(2) The ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the value of all of its property and assets wherever situated or used. . . .

business transactions within that State. As imposed upon a foreign corporation doing only interstate business within the State, the tax was held invalid under the Commerce Clause. The Court in *Spector* said however,

> "The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State. Those taxes may be imposed although their payment may come out of the funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the power of the State and nondiscriminatory." 340 U.S. at 609, 71 S.Ct. at 512, 95 L.Ed. at 578.

In 1964, the United States Supreme Court in *General Motors Corp. v. Washington, supra*, validated a State tax upon a foreign corporation's gross wholesale sales of cars, parts and accessories within the State, finding the levy was upon a significant local incident, namely substantial local business activity of the corporation. In *General Motors Corp.* the Court said the decisive question relative to the operating incident of the tax was "whether the State has exerted its power in proper proportion to appellant's activities within the State and to appellant's consequent enjoyment of the opportunities and protections which the State has afforded." It also stated "the validity of the tax rests upon whether the State is exacting a constitutionally fair demand for that aspect of interstate commerce to which it bears a special relation." 377 U.S. at 441, 84 S.Ct. 1568, 12 L.Ed.2d at 435.

Then in 1959, the Supreme Court decided *Northwestern States, Portland Cement Co. v. Minnesota, supra*, which involved the constitutionality of non-discriminatory state net income tax laws levying taves on that portion of a foreign corporation's net income earned from and fairly apportioned to business activities within the taxing State, even though

such activities were exclusively in furtherance of interstate commerce. The Supreme Court held the statute not constitutionally infirm if the levy is not discriminatory and is properly apportioned to the activity within the taxing state. It found the in-state activities to form "a sufficient 'nexus between such a tax and transactions within a state for which the tax is an exaction.' " 358 U.S. at 464, 79 S.Ct. at 365-66, 3 L.Ed.2d at 431. The Supreme Court quoted *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 61 St.Ct. 246, 85 L.Ed. 267 (1940), " 'the controlling question is whether the State has given anything for which it can ask return.' " 358 U.S. at 465, 79 S.Ct. at 366, 3 L.Ed.2d at 431.

In *Railway Express Agency v. Virginia, supra*, decided the same day as *Northwestern States Portland Cement*, the Supreme Court held valid a francise tax in lieu of taxes upon all of its other intangible property and in lieu of property taxes on its rolling stock measured by gross receipts from transportation within Virginia.

We believe that the decisions of the United States Supreme Court following *Memphis Natural Gas* and *Spector*, do indeed, as contended by the Collector of Revenue here, indicate inroads into the tax immune status of exclusively interstate activity. This was similarly the opinion of the Supreme Court of the State of New Jersey in the 1967 case of *Roadway Express, Inc. v. Director, Division of Taxation*, 50 N.J. 471, 236 A.2d 577 (1967). In *Roadway Express*, in sustaining the imposition of New Jersey's privilege tax upon a corporation conducting exclusively interstate business in the State, the New Jersey Supreme Court suggested that the United States Supreme Court majority opinion in *Spector* no longer characterized its (the United States Supreme Court's) attitude towards State taxation of interstate commerce and that *Spector* "remains authority at the very most, only in the precise statutory situation there found." 50 N.J. at 487, 236 A.2d at 585.

While the New Jersey court did sustain the tax because it was, unlike the case here before us, *in lieu* of all other State, County or local taxation upon or measured by intangible personal property,[5] the New Jersey Court went on further to conclude that the tax was additionally sustainable as a levy " 'for the privilege of • • • employing or owning capital or property, or maintaining an office, in this State,' " and also for " 'the privilege of • • • exercising its corporate franchise' " in the State of New Jersey. That Court concluded that such privileges are sufficiently different from that of "doing" interstate business such that they are aspects of business subject to the sovereign power of the State. 50 N.J. at 492, 236 A.2d at 588.

Appeal of *Roadway Express* from the Supreme Court of New Jersey was dismissed by the United States Supreme Court "for lack of a substantial Federal question." 390 U.S. 745, 20 L.Ed.2d 276, 88 S.Ct. 1443 (1968).

While the Supreme Court's dismissal of Roadway's appeal for lack of a substantial question may have been affected by the *in lieu* feature of the tax there involved, the major significance of the New Jersey decision "lies in its direct attack on tax immunity derived from the privilege of doing interstate business,"[6] particularly in its validating the imposition of an excise tax upon the privilege of exercising a corporate franchise, owning property, employing capital, and maintaining an office in a given state.

In a case the result of which was similar to that expressed

[5] And, of course, such an "in lieu tax had specifically been sanctioned by the U. S. Supreme Court in Railway Express Agency v. Virginia, 358 U.S. 434, 79 S.Ct. 411, 3 L.Ed.2d 450 (1959).

[6] Hellerstein, State Taxation of Interstate Commerce: Roadway Express, the Diminishing Privilege Tax Immunity, and the Movement Toward Uniformity in Apportionment, 36 U.Chi.L.Rev. 186, 195 (1968).

in this opinion, the Tennessee Supreme Court in *Texas Gas Transmission Corp. v. Atkins*, 197 Tenn. 123, 270 S.W.2d 384, *cert. denied* 348 U.S. 883, 75 S.Ct. 125, 99 L.Ed. 694 (1954), held that despite the Supreme Court's proscription in *Spector* of a levy on the right to do interstate business, taxing the right to do business (even though exclusively interstate) in corporate form, not involved in *Spector*, was Constitutionally permissible. In that case, as in this decision, State excise and franchise taxes were held valid as applied to a foreign corporation engaged exclusively in the interstate transportation of gas by pipeline through Tennessee. *See also Mid Valley Pipeline Co. v. King*, 221 Tenn. 724, 431 S.W.2d 277 (1968), appeal dismissed for lack of a substantial question, 393 U.S. 321, 89 S.Ct. 556, 21 L.Ed 517 (1969).

Louisiana's corporation franchise tax statute, as amended by Act 325 of 1970, and as applied to foreign corporations doing only interstate business in Louisiana, taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this state, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the State.

The corporation, including the foreign corporation doing only interstate business in Louisiana, enjoys under our laws many priviliges separate and apart from simply doing business, such for instance as the legal status to sue and be sued in the Courts of our State, continuity of business without interruption by death or dissolution, transfer of property interests by the disposition of shares of stock, advantages of business controlled and managed by corporate directors, and the general absence of individual liability, among others.

That the corporation enjoys power and privileges not

possessed by individuals or partnerships was long ago recognized by this Court. *Conway v. Lane Cotton Mills Co.*, 178 La. 626, 152 So. 312 (1933).

The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing interstate business in the State, does not in our view detract from the fact that the local incident taxed is the **form of doing business** rather than the business done by that corporation. And it is our view that the local incident is real and sufficiently distinguishable, so that taxation thereof does not, under the controlling decisions of the United States Supreme Court, violate the Commerce Clause.

The statute does not discriminate between foreign and local corporations, being applicable, as it is, to both. Nor do we believe that the State's exercise of its power by this taxing statute is out of proportion to Colonial's activities within the state and their consequent enjoyment of the opportunities and protection which the state has afforded them.

Furthermore we believe that the State has given something for which it can ask return. The return, tax levy in this case, is an exaction which the State of Louisiana requires as a recompense for its protection of lawful activities carried on in this state by Colonial, activities which are incidental to the powers and privileges possessed by it by the nature of its organization, here, as in *Memphis Natural Gas*, the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of their pipeline system throughout the 258 miles of its pipeline in the State of Louisiana.

We therefore find R.S. 47:601 et seq. to be a Constitutional exercise of the State of Louisiana's taxing power not unconstitutional under the Commerce Clause of the Federal Constitution.

Having reached this conclusion we turn now to Colonial's alternative plea, that in any event their tax obligation for the calendar year 1970 be limited to $10.00.

L.R.S. 47:611, reads as follows:

> "Every corporation shall pay only the minimum tax of ten dollars ($10.00) in the first accounting period or fraction thereof in which it becomes subject to the tax levied herein."

Under the 1970 amendment, the tax became effective for all taxable years beginning on or after December 31, 1969. Therefore, the first year that Colonial became subject to the tax under the statute was 1970, and could owe no greater tax during that year than the amount set forth in L.R.S. 47:611, above.

Colonial is correct in this position. The Collector of Revenue so concedes.

The corporation franchise tax paid by Colonial, recovery of which is sought in this litigation was:

For 1970, including interest to date of payment, $80,-835.02

For 1971, including interest to date of payment, $69,-884.78.

Inasmuch as Colonial is entitled to recover all but $10.00 of the sum paid for 1970, and inasmuch as we hold the tax valid and applicable for the year 1971, we are required to amend the judgment of the Court of Appeal.

Accordingly, for the foregoing reasons, the judgment of the Court of Appeal insofar as it held La. R.S. 47:601 as amended by Act No. 325 of 1970 unconstitutional is reversed, and the judgment in favor of Colonial Pipeline Co. and against

the Collector of Revenue, State of Louisiana is otherwise amended to reduce the principal amount thereof from $150,-719.80 to $80,825.02; in other particulars judgment is affirmed.

Judgment reversed in part, amended in part and affirmed.

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COURT OF APPEAL, FIRST CIRCUIT
STATE OF LOUISIANA

NUMBER 9231 FEB 28 1973

COLONIAL PIPELINE COMPANY

Plaintiff-Appellee

versus

E. LEE AGERTON, COLLECTOR OF REVENUE

Defendant-Appellant

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF EAST BATON ROUGE, HONORABLE DANIEL W. LeBLANC, JUDGE PRESIDING

BEFORE: SARTAIN, BLANCHE AND WATSON, JJ.

SARTAIN, J.

This litigation involves the application of R.S. 47:601 (Franchise Tax) as amended by Act No. 325 of 1970.

The issues presented herein are identical to those presented in *Colonial Pipeline Company v. Mouton*, 228 So.2d 718 (1969), writs refused 231 So.2d 393.

The Collector of Revenue of the State of Louisiana (Collector) levied a "tax" on the plaintiff pursuant to the 1970

amendment. Colonial Pipeline Company (Colonial) paid the taxes under protest and instituted this action to recover the same.

The trial judge held that there was little, if any, difference between R.S. 47:601 (Act 373 of 1958) and the statute after its amendment. We affirm.

R.S. 47:601, as amended by Act 437 of 1958, read as follows:

"§ 01. Imposition of tax

"Every domestic corporation and every foreign corporation, exercising its charter, authorized to do or doing business in this state, or owning or using any part of all of its capital or plant in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter, shall pay a tax at the rate of one dollar and 50/100 ($1.50) for each one thousand dollars ($1,000.00), or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than ten dollars ($10.00) in any case. The tax levied herein is due and payable for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter within this state, or owning or using any part or all of its capital or plant in this state.

The same section as amended by Act 325 of 1970 now reads:

"§ 601. Imposition of tax

"Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in

this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

"(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term 'doing business' as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

"(2) The exercising of a corporation's charter or the continuance of its charter within this state.

"(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

"It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. **The tax hereby imposed shall be in addition to all other taxes levied by any other statute.** (Emphasis ours)

"As used herein the term 'domestic corporation' shall mean and include all corporations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term 'foreign corporation' shall mean and include all such business organizations as hereinbefore described in this paragraph

which are organized under the laws of any other state, territory or district, or foreign country."

It was stipulated that Colonial's operations in the State of Louisiana have not changed since the first Colonial case.

The Collector argues that significant changes were made in the operating incidents of the statute. Further, that the alternative incidents (Sections 1 thru 3) are sufficient to support a valid application of the franchise tax upon Colonial.

In his written reasons for judgment the trial judge held, inter alia, that the three incidences in themselves are not sufficient and quoted *Colonial Pipeline v. Mouton*, 228 So.2d 718, 722, as follows:

> "This question has never been squarely presented to an appellate court of this state, to our knowledge, on any prior occasion. However, we are of the opinion that these privileges are not of a sufficient local nature as to subject Colonial to a franchise tax. The privilegs above enunciated are incidental to and in the furtherance of Colonial's primary object of transporting petroleum products in interstate commerce. The mere qualification to do business does not, per se, subject Colonial to the subject tax."

The major difference that we find in R.S. 47:601 is the removal of the statement "privilege to do business" and the addition of the "corporate form" incident. We believe this to be a distinction without a difference.

In the first Colonial case we made a comprehensive analysis of the cases involving the imposition of a franchise tax upon companies engaged in interstate commerce. First, we recognized that Congress has the exclusive power under the Commerce Clause to regulate interstate commerce and even where the Congress has failed to act on the subject in the area of taxation, the Commerce Clause requires that interstate commerce be free from any direct restrictions or impo-

sitions by the state. The clause itself is a limitation upon the power of the states by prohibiting any interference by the states.

We recognize that not all taxes are invalid. A state may require the payment of ad valorem taxes, a use tax, and a properly apportioned income tax. It is conceded that Colonial is paying these taxes to th State of Louisiana. In the first Colonial suit, we stated: (228 So.2d 718, 720)

> "[5, 6] However, in the area of franchise or excise taxes imposed by a state on a corporation engaged in interstate commerce, as a general rule, is invalid if the tax is on the 'privilege' of doing business. On the other hand, the tax is valid if it is determined that it is a tax on 'local activities' or an 'in lieu' tax. In *Freeman v. Hewit*, 329 U.S. 249, 67 S.Ct. 274, 91 L.Ed. 265, the court held that it is a question of law and fact and that the task of scrutinizing is the task of drawing lines and placing the facts on the proper side of the line which in turn dictate the categorization of the statute and place it in its proper niche, i.e., valid or invalid. The decisive issue in cases of this type turns on the operating incidence of the tax. *General Motors Corporation v. Washington*, 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed. 2d 430."

It is apparent to us that we are again talking about a "corporate franchise tax" and the question posed for resolution is whether or not the operating incidents enumerated in the statute are sufficient to permit its imposition. We must conclude that they are not. Significantly, the statute as amended still contains the essential taxable incidents as it did before the amendment. More importantly, it is imposed "in addition to all other taxes levied by any other statute."

It can be readily seen that if each state in which a foreign corporation, engaged exclusively in interstate commerce, could impose a franchise tax based on that corporation's **total** capital stock, surplus, undivided profits, and borrowed captial,

the tax burden would be such as to literally prevent the corporation's interstate operation. It is for this basic reason that the Commerce Clause has been invoked to prevent such taxation. The exceptions are very carefully defined and are solely upon "local incidents" or what has been classified as "in lieu tax."

Counsel for the Collector cites several authorities which he contends sanction imposition of the tax herein considered. He principally relies on *Memphis Natural Gas Co. v. Stone*, 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948); *Texas Gas Transmission Corporation v. Atkins*, 270 S.W. 2d 384 (1954); *Mid-Valley Pipeline v. King*, 431 S.W. 2d 277 (1968); *Great Lakes Pipeline v. Oklahoma Tax Commission*, 231 P.2d 675 (1951); and *Roadway Express, Inc. v. Director, Division of Tax*, 236 A.2d 577.

In *Memphis Natural Gas Company*, Mississippi Code, Section 9313 and 9314 specifically assessed a tax upon the "capital used, invested or employed . . . within this state, . . . ". Our R.S. 47:601 imposes a tax upon the total corporate structure of Colonial. In *Texas Gas Transmission Corporation*, the Tennessee tax there under consideration was on the "net earnings for the next preceding year, from business done in Tennessee." In *Mid-Valley Pipeline*, the Supreme Court of Tennessee properly recognized that its tax was an apportioned excise tax on corporate earnings from business done within the state and that "local incidence or activities may be a basis for a franchise tax, provided the local activities can be separated from interstate commerce." *Roadway Express, Inc.* involved the interpretation of a New Jersey statute imposing a "franchise tax." However, it is noted that the tax there imposed was *in lieu of* all other state, county or local taxes. The measure of the tax was determined by an allocation formula.

The Collector further argues that in the first Colonial

case we limited our decision there to the very narrow issue as to whether R.S. 47:601 then under consideration (Act No. 373 of 1958) levied a tax "squarely upon the privilege of engaging in business in Louisiana." This we concede but we also stated in the first Colonial case that Louisiana could levy a tax *in lieu of* other taxes, on tangibles or intangibles (good will) or local incidents or local activities. We again adhere to that statement but again the undeniable fact is that the three incidences now urged are nothing more than a rephrasing of the general language contained in R.S. 47:601 prior to its amendment in 1970.

Accordingly, for the above and foregoing reasons, the judgment of the District Court is affirmed. All such costs as authorized by law are assessed against the defendant.

AFFIRMED.

* * * * *

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 15th day of February, 1974, the following action was taken by the Supreme Court of Louisiana in the cases listed below:

REHEARINGS REFUSED:

53,552 *Colonial Pipeline Co. v. Agerton, Collector*, etc.

Appendix B

NOTICES OF APPEAL

SUPREME COURT OF LOUISIANA

No. 53,552

FILED: MARCH 28, 1974

COLONIAL PIPELINE COMPANY,

Plaintiff-Appellant

versus

E. LEE AGERTON, COLLECTOR OF REVENUE,

Defendant-Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Colonial Pipeline Company, Plaintiff-Appellant, named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Louisiana reversing the judgment of the Louisiana Court of Appeal, First Circuit, and refusing to hold that L.R.S. 47:601, as amended by Act 325 of 1970, is unconstitutional by reason of conflict with the Commerce Clause of the United States Constitution, which judgment was entered in this action on January 14, 1974.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

The following question is presented by this appeal:

Whether the Louisiana Corporation Franchise Tax upon the privilege of doing business in any form can be constitu-

tionally levied upon a foreign corporation engaged exclusively in interstate commerce in Louisiana.

By Attorneys,

R. Gordon Kean, Jr. — of
SANDERS, MILLER, DOWNING & KEAN
Post Office Box 1588
Baton Rouge, Louisiana 70821

Attorney for Colonial Pipeline Company, Plaintiff-Appellant

PROOF OF SERVICE

The undersigned, one of the attorneys for Colonial Pipeline Company, plaintiff-appellant herein and a member of the Bar of the Supreme Court of the United States hereby certifies that on the 27th day of March, 1974, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Joseph N. Traigle, Successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, by mailing a copy of the name in an addressed envelope with postage prepaid to his counsel of record, Whit M. Cook II, State of Louisiana, Department of Revenue, Legal Division, Post Office Box 201, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this 27th day of March, 1974.

R. Gordon Kean, Jr.

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19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "H"

NO. 152,892

FILED: MARCH 28, 1974

COLONIAL PIPELINE COMPANY,
Plaintiff-Appellant

versus

E. LEE AGERTON, COLLECTOR OF REVENUE,
Defendant-Appellee

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Colonial Pipeline Company, Plaintiff-Appellant, named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of Louisiana reversing the judgment of the Louisiana Court of Appeal, First Circuit, and refusing to hold that L.R.S. 47:601, as amended by Act 325 of 1970, is unconstitutional by reason of conflict with the Commerce Clause of the United States Constitution, which judgment was entered in this action on January 14, 1974.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

The following question is presented by this appeal:

Whether the Louisiana Corporation Franchise Tax upon the privilege of doing business in any form can be constitu-

tionally levied upon a foreign corporation engaged exclusively in interstate commerce in Louisiana.

By Attorneys,

R. Gordon Kean, Jr. — of

SANDERS, MILLER, DOWNING & KEAN
Post Office Box 1588
Baton Rouge, Louisiana 70821

Attorney for Colonial Pipeline Company, Plaintiff-Appellant

PROOF OF SERVICE

The undersigned, one of the attorneys for Colonial Pipeline Company, plaintiff-appellant herein and a member of the Bar of the Supreme Court of the United States hereby certifies that on the 27th day of March, 1974, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Joseph N. Traigle, Successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, by mailing a copy of the same in an addressed envelope with postage prepaid to his counsel of record, Whit M. Cook II, State of Louisiana, Department of Revenue, Legal Division, Post Office Box 201, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this 27th day of March, 1974.

R. Gordon Kean, Jr.

Appendix C

STATUTES INVOLVED

The following sections of Title 47 of the Louisiana Revised Statutes are involved in this case:

§ 401. Failure to pay tax; judgment prohibiting further pursuit of business

Failure to pay the tax levied by this Chapter shall ipso facto, without demand or putting in default, cause the tax, interest, penalties and costs to become immediately delinquent, and the collector of revenue is hereby vested with authority, on motion in a court of competent jurisdiction, to take a rule on the delinquent taxpayer to show cause in not less than two nor more than ten days, exclusive of holidays, why the delinquent taxpayer should not be ordered to cease from further pursuit of the business taxed under this Chapter. This rule may be tried out of term and in chambers, and shall always be tried by preference. If the rule is made absolute, the order therein rendered shall be considered a judgment in favor of the state prohibiting the taxpayer from the further pursuit of the business until such time as he has paid the delinquent tax, interest, penalties and costs, and every violation of the injunction shall be considered a contempt of court, and punished according to law.

§ 601. Imposition of tax (before 1970 amendment)

Every domestic corporation and every foreign corporation, exercising its charter, authorized to do or doing business in this state, or owning or using any part or all of its capital or plant in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter shall pay a tax at the rate of one dollar and 50/100 ($1.50) for each one thousand dollars ($1,000.00), or major fraction

thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than ten dollars ($10.00) in any case. The tax levied herein is due and payable for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter within this state, or owning or using any part or all of its capital or plant in this state.

Amended by Acts 1958, No. 437.

§ 601. Imposition of tax (After 1970 Amendment)

Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided: the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organization, as well as, the buying, selling or procuring of services or property.

(2) The exercising of a corporation's charter or the continuance of its charter within this state.

(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

As used herein the term "domestic corporation" shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term "foreign corporation" shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any state, territory or district, or foreign country.

Amended by Acts 1970, No. 325.

§ 606. Allocation of taxable capital

A. General allocation formula. For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios:

(1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable

to Louisiana bears to the total net sales made to customers in the regular course of business and other revenue. For the purposes of this Sub-section net sales and other revenues attributable to Louisiana shall be determined as follows:

(a) Sales attributable to this state shall be all sales where the goods, merchandise or property are received in this state by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state. Revenue derived from a sale of property not made in the regular course of business shall not be considered.

(b) Revenues attributable to this state derived from air transportation shall include all gross receipts from passenger journeys and cargo shipments originating in Louisiana.

(c) Revenues attributable to this state derived from transportation of crude petroleum, natural gas, petroleum products or other commodities for others through pipelines shall include all gross revenue derived from operations entirely within this state plus a portion of any revenue from operations partly within and partly without this state, based upon the ratio of the number of units of transportation service performed in Louisiana in connection with such revenue to the total of such units. A unit of transportation service shall be the transporting of any designated quantity of crude petroleum, natural gas, petroleum products or other commodities for any designated distance.

(d) Revenues attributable to this state derived from

transportation other than aircraft or pipeline shall include all such income that is derived entirely from sources within this state, and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules, and regulations of the collector, which shall give due consideration to the proportion of service performed in Louisiana.

(e) Revenues from services other than those described above shall be attributed within and without Louisiana on the basis of the location at which the services are rendered.

(f) Rents and royalties from immovable or corporeal movable property, shall be attributed to the state where such property is located at the time the revenue is derived.

(g) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

(h) Other interest and dividends shall be attributed to the state in which the securities or credits producing such revenue have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs shall be at the commercial domicile of the corporation.

(i) Royalties or similar revnue from the use of patents, trade marks, copyrights, secret processes and other similar intangible rights shall be attributed to the state or states in which such rights are used.

(j) Revenues from a parent or subsidiary corporation shall be allocated as provided in Sub-section B of this Section.

(k) All other revenues shall be attributed within and without this state on the basis of such ratio or ratios, prescribed by the collector, as may be reasonably applicable to the type of revenues and business involved.

(2) The ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the value of all of its property and assets wherever situated or used. In determining value, depreciation and depletion reserves must be deducted from the book values of the properties in question. The various classes of property and assets shown below shall be allocated within and without Louisiana on the bases indicated:

(a) Cash shall be allocated to the state in which located.

(b) Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(c) Trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered.

(d) Investments in and advances to a parent or subsidiary shall be allocated as provided in Sub-section B of this Section.

(e) Notes and accounts other than those notes and accounts described under items (b) through (d) above shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(f) Stocks and bonds not included in (b) or (d) above shall be allocated to the state in which they have their business situs or in the absence of a business situs to the state in which is located the commercial domicile of the taxpayer.

(g) Immovable and corporeal movable property shall be allocated within and without Louisiana on the basis of actual location. Corporeal movable property of a class which is not normally located within a particular state the entire taxable year shall be allocated within and without Louisiana by use of a ratio which shall give due consideration to the usage within and without this state. Mineral leases and royalty interests shall be allocated to the state in which the property covered by the lease or royalty interest is located.

(h) All other assets shall be allocated within or without Louisiana on the basis, prescribed by the collector, as may reasonably be applicable to the assets and the type of business involved.

B. Allocation of intercompany items. For the purpose of allocation, investments in, advances to, or revenues from a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the parent or subsidiary corporation. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly or substantially owned by another corporation and whose management, business policies and operations are, howsoever, actually, wholly or substantially controlled by another corporation; which latter corporation shall be termed the parent corporation.

C. Minimum allocation; assessed value of real and personal property. The portion of capital stock, surplus, undivided profits and borrowed capital allocated for franchise taxation under this Chapter shall in no case be less than the total assessed value of real and personal property in this state of each such domestic or foreign corporation for the calendar year preceding that in which the tax is due.

§ 1501. Definitions

The terms "Collector" or "Collector of Revenue" when used in this Title mean the Collector of Revenue for the State of Louisiana. The term "Sub-title" means and includes all the chapters in Sub-title II of this Title 47 and any other Chapter of these Revised Statutes, the administration of which has been delegated to the Collector of Revenue.

§ 1561. Alternative remedies for the collection of taxes

In addition to following any of the special remedies provided in the various Chapters of this Sub-title, the collector may, within his discretion, proceed to enforce the collection of any taxes due under this Sub-title, by means of any of the following alternative remedies or procedures:

(1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.

(2) Summary court proceeding, as privided in R.S. 47:1574.

(3) Ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

The collector may choose which of these procedures he will pursue in each case, and the counter-remedies and delays to which the taxpayer will be entitled will be only those which are not inconsistent with the proceeding initiated by the collector; provided that in every case the taxpayer shall be entitled to proceed under R.S. 47:1576 except after he has filed a petition with the board of tax appeals for a redetermination of the assessment, and except when there is pending against him a suit involving the same tax obligation; and provided further, that the fact that the collector has initiated proceedings under the assessment and distant procedure will not preclude him from thereafter proceeding by summary or ordinary

court proceedings for the enforcement of the same tax obligation.

§ 1576. Payment of tax under protest; remedy at law for recovery

A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest or other charges imposed in this Sub-title. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Sub-title, shall pay the amount found due to the collector and at that time shall give the collector notice of his intention to file suit for the recovery therof. Upon receipt of this notice, the amount paid shall be segregated and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds segregated shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the collector to the date of refund.

This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Sub-title, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

This Section shall be construed to provide a legal remedy in the state or federal courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act

of Congress or the United States Constitution, or the Constitution of the State of Louisiana, or in any case where jurisdiction is vested in any of the courts of the United States.

Upon request of a person and proper showing by such person that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

§ 1641. Criminal penalty for failing to account for state tax money

Any person required under this Sub-title to collect, account for, or pay over any tax, penalty, or interest imposed by this Sub-title, who wilfully fails to collect or truthfully account for or pay over such tax, penalty or interest, shall in addition to other penalties provided by law, be guilty of a felony and shall be fined not more than ten thousand dollars ($10,000.00) or imprisoned for not more than five years, or both.

Supreme Court, U. S.
FILED
JUL 18 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-1595

COLONIAL PIPELINE COMPANY,

Appellant,

VS.

E. LEE AGERTON,
COLLECTOR OF REVENUE,

Appellee.

APPEAL FROM THE SUPREME COURT
OF LOUISIANA

Filed April 25, 1974
Jurisdiction Noted June 17, 1974

CHRONOLOGICAL LIST OF DATES

In lieu of printing docket entries, the following chronological list of important dates on which pleadings were filed, hearings held and orders entered is supplied:

DOCUMENT	DATE
Petition filed	November 17, 1971
Judgment of Louisiana District Court	May 26, 1972
Judgment of Louisiana Court of Appeal	February 28, 1973
Rehearing Refused	April 9, 1973
Writ Granted by Louisiana Supreme Court	June 21, 1973
Judgment of Louisiana Supreme Court	January 14, 1974
Rehearing Refused	February 15, 1974
Notices of Appeal filed	March 28, 1974
Jurisdictional Statement filed	April 25, 1974
Motion to Dismiss filed	May 23, 1974
Jurisdiction Noted	June 17, 1974

I N D E X

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Petition with Exhibits Attached	1
Answer with Exhibits Attached	15
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Written Reasons for Judgment, Louisiana District Court	77
Judgment, Louisiana District Court	82
Opinion of Louisiana Court of Appeal (See Jurisdictional Statement, p. 40)	
Opinion of Louisiana Supreme Court (See Jurisdictional Statement, p. 25)	
Rehearing Refused by Louisiana Supreme Court (See Jurisdictional Statement, p. 46)	

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
CIVIL DOCKET NO.

COLONIAL PIPELINE COMPANY NUMBER 152892 B

VS. Filed Nov 17, 1971

E. LEE AGERTON,
COLLECTOR OF REVENUE PETITION FOR TAX REFUND

The petition of Colonial Pipeline Company (Colonial), a corporation, with respect represents that:

1.

Colonial is a Delaware corporation with its principal office located in Atlanta, Georgia; petitioner now is and since 1962 has been qualified with the Secretary of State, but transacts only interstate business in the State of Louisiana.

2

Defendant, E. Lee Agerton, hereinafter referred to as "Collector", is the duly qualified and acting Collector of Revenue for the State of Louisiana.

3.

In connection with the filing of Colonial's Louisiana Income Tax (1969) and Franchise Tax (1970) return on September 15, 1970, Colonial advised the Collector that it was "engaged exclusively in interstate commerce" and was "therefore not subject to the Louisiana Franchise Tax." On the same date, counsel

for Colonial formally requested that the Department of Revenue make a determination as to its position concerning the application of the Louisiana Franchise Tax to Colonial's interstate operations in this State. A copy of said request is annexed as Exhibit "A".

4.

On September 14, 1971, the Department still having made no determination concerning application of the Louisiana Franchise Tax to Colonial's interstate operations in this State, Colonial filed its Income Tax (1970) and Franchise Tax (1971) return, and made the same declaration as appeared on the face of the 1969-1970 return denying any liability for the 1971 Franchise Tax. On the same date, counsel for Colonial again formally requested that the Department make a final determination of its position with regard to the matter. A copy of said request is annexed as Exhibit "B".

5.

The Collector, by a letter dated October 20, 1971, advised counsel for Colonial that the Chief Counsel for the Department of Revenue had finally determined that Colonial was "liable for the corporation franchise tax for 1970 and 1971." Accordingly, demand was made for the payment of said taxes in the total sum of $150,719.80, including tax and interest to October 30, 1971. A copy of said letter is annexed as Exhibit "C".

6.

On November 1, 1971, strictly in accordance with and pursuant to the provisions of L.R.S. 47:1576, Colonial paid to the Collector

the sum of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars under protest, covering franchise tax allegedly due for the years 1970 and 1971, together with interest thereon, and at the same time gave written notice to the Collector of its intention to file suit for the recovery thereof, as is shown by the letter addressed to the Collector dated November 1, 1971, and by the letter addressed to Mr. Ben A. Grasser, Director, Corporation Income and Franchise Tax Division, dated the same date, together with the receipt attached thereto, copies of which are attached hereto, marked Exhibits "D" and "E" respectively.

7.

Petitioner shows that it owns and operates a pipeline system extending from Houston, Texas, to the New York harbor area, together with various lateral lines, pumping stations, tank farms and other related facilities, all of which is used solely for the interstate transportation of refined petroleum products, petitioner being a "common carrier" under the jurisdiction of the Interstate Commerce Commission.

8.

Petitioner transports shipments of refined petroleum products for anyone desiring to ship under tariffs established for this purpose, and does not buy or sell any oil, gas or other minerals or products for its own account, either in the State of Louisiana or elsewhere, and it does not own any of the products transported in its pipeline system.

9.

Petitioner makes no intrastate movements or shipments and is not engaged in any other business; its business is solely that of an interstate carrier for hire.

10.

All personnel employed by Colonial and all facilities and property owned, leased or used by it are utilized solely in connection with the operation of its interstate business.

11.

In Colonial Pipeline Company vs Mouton, 228 So. 2d 718, writ refused, 255 La. 474, 231 So. 2d 393, the Court of Appeal, First Circuit, construed the provisions of L.R.S. 47:601 as levying a tax upon the privilege of doing business in Louisiana, and thus invalid when sought to be levied on Colonial, engaged as it was in interstate commerce.

12.

Colonial shows that there has been no change in its operations in Louisiana since the decision in "Colonial Pipeline Company vs. Mouton", supra, that it is still engaged solely in the interstate transportation of refined petroleum products, and that all of its personnel and facilities located in the State of Louisiana are utilized solely in the operation of its interstate business, all as set forth above.

13.

Colonial shows that the Collector nonetheless now seeks to impose the Louisiana Corporation Franchise Tax upon it, under the

provisions of L.R.S. 47:601, as amended by Act 325 of 1970.

14.

Colonial now shows that the Collector was and is in error in construing L.R.S. 47:601 as amended by Act 325 of 1970, as levying a tax upon petitioner because the statute does not impose any tax for the privilege of engaging exclusively in interstate commerce, and any such interpretation would be contrary to the terms and wording of the statute, as well as the purpose and intent of the Louisiana Legislature in enacting it, and the jurisprudence of this State in construing the statutory provisions in question.

15.

Alternatively, petitioner shows that should L.R.S. 47:601 be construed as levying any tax upon petitioner, which is denied, such statute violates Article I, Section 8, Clause 3 (the commerce clause) of the Constitution of the United States in that it constitutes an unlawful burden upon interstate commerce and infringes upon the powers of the Congress to regulate commerce among the states, and the due process clause of the Fourteenth Amendment of said Constitution, and Article I, Section 2 of the Louisiana Constitution, in that petitioner would be deprived of its property without due process of law, and any such tax imposition is therefore null and void.

16.

In the further alternative, and only in the event it be held that the Louisiana Corporation Franchise Tax is applicable to Colonial (which is denied) and as so applied is

constitutional (which is denied), then in such event, Colonial shows that the year 1970 was the first accounting period in which Colonial was or could be subject to said tax, and that, under the provisions of L.R.S. 47:611, is liable in said year for only the minimum tax of Ten ($10.00) Dollars.

WHEREFORE, Colonial prays for judgment against the defendant, Collector of Revenue, as follows:

I. In favor of Colonial Pipeline Company for the full sum of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars, together with interest on that amount at the rate of two (2%) percent per annum from November 2, 1971, until paid.

II. In the alternative, and only in the event it be found and held that the Louisiana Corporation Franchise Tax levied under the provisions of L.R.S. 47:601 is applicable to Colonial Pipeline Company (which is denied), and as so applied is constitutional (which is denied), then, in such event, there be judgment in favor of Colonial Pipeline Company holding that the only such tax due for the year 1970 was the sum of Ten ($10.00) Dollars, and judgment be accordingly rendered in favor of Colonial Pipeline Company in the full sum of Eighty Thousand Eight Hundred Twenty Five and 02/100 ($80,825.02) Dollars, representing refund of the excess Corporation Franchise Tax paid for the year 1970, together with interest on that amount at the rate of two (2%) percent per annum from November 2, 1971, until paid.

By Attorneys:

s/R. Gordon Kean Jr.
R. Gordon Kean, Jr. ---------- of
SANDERS, MILLER, DOWNING & KEAN
Post Office Box 1588
Baton Rouge, Louisiana 70821

Of Counsel:

Jack Vickrey
General Counsel
Colonial Pipeline Company
3390 Peachtree Road N.E.
Lenox Towers
Atlanta, Georgia 30326

INFORMATION FOR SERVICE:

Please serve: Collector of Revenue,
State of Louisiana,
Capitol Annex,
Baton Rouge, Louisiana.

- - - - -

P-1

FILED IN EVIDENCE
EXHIBIT P-1
DATE March 10, 197
Joan M. Marks
DEPUTY CLERK

September 15, 1970

Mr. Ben A. Grasser
Director
Corporation Income & Franchise Tax Division
Department of Revenue
Capitol Annex
Baton Rouge, Louisiana

Re: Colonial Pipeline Company

Dear Mr. Grasser:

This will confirm our several telephone conversations of Monday, September 14th, relative to the filing of the Corporation Income and Franchise Tax Return of Colonial Pipeline Company for the years 1969 (Income Tax), and 1970 (Franchise Tax).

As I pointed out to you, Colonial Pipeline Company is an interstate carrier of refined petroleum products. In the recent case entitled "Colonial Pipeline Company vs. Collector of Revenue", decided by the Court of Appeals, First Circuit (Writs Denied), it was held that the Louisiana Franchise Tax could not be constitutionally levied on the operations of this company in the State of Louisiana. We recognize, of course, that the Louisiana Franchise Tax Statute was amended by Act 325 of 1970; however, it is still our opinion as counsel for Colonial, that the tax, even as amended, cannot be constitutionally levied against and collected on Colonial's operations in this state, these activities being purely interstate in character.

Accordingly, we transmit herewith the tax return referred to, showing income tax due the State of Louisiana in the sum of $55,441.00 for the taxable year 1969. After deduction of estimated income tax payments, previously paid, there remains due the State of Louisiana a balance of $2,490.00, as shown on the return. We transmit herewith Colonial's check in such amount, in full payment of the income tax due as computed by Colonial.

With regard to the Louisiana Corporation Franchise Tax, we attach to the return, schedules which may be used for the purpose of determining

EXHIBIT A

Mr. Ben A. Grasser
Director
Corporation Income & Franchise Tax Division
Department of Revenue

the franchise tax due for 1970, if any such be due (which we deny). We compute the tax as of September 14, 1970, to be $69,536.00, with interest thereon in the amount of $1,391.00, making a total of $70,927.00 for the taxable year in question. As noted on the return, however, this amount is not being paid, it being our position, as aforesaid, that Colonial Pipeline Company is engaged exclusively in interstate commerce and is therefore not subject to the Louisiana Franchise Tax, levied as it would be on this interstate business.

As I indicated to you in our telephone conversation, Colonial was prepared to pay the Louisiana Corporation Franchise Tax for 1970, in the amount stated above, under protest in accordance with the provisions of L.R.S. 47:1576. At your suggestion, we file the return transmitted herewith in order that the Department of Revenue may follow its usual procedure in such cases, it being our understanding that no penalty will be assessed.

As soon as the Department of Revenue has made a final determination concerning application of the Louisiana Franchise Tax to Colonial's Louisiana activities, I would appreciate hearing from you. It would be our intention, as soon as a notice of proposed assessment is made, to immediately pay the tax under protest and file suit for a refund, all in accordance with the provisions of L.R.S. 47:1576.

Very truly yours,

R. Gordon Kean, Jr.

RGK:ja

Enclosures

P-2

FILED IN EVIDENCE
EXHIBIT P-2
DATE March 10, 19
DEPUTY CLERK

September 14, 1971

Mr. Ben A. Grasser
Director
Corporation Income & Franchise Tax Division
Department of Revenue
Capitol Annex
Baton Rouge, Louisiana

RE: Colonial Pipeline Company

Dear Mr. Grasser:

As you know, we have previously filed the Corporation Income and Franchise Tax Return of Colonial Pipeline Company, paying the income tax due the State of Louisiana, but, on the basis that Colonial is engaged exclusively in interstate commerce, we have not paid the Louisiana Franchise Tax. Appropriate information has been contained on the combination tax return filed by Colonial to indicate the amount of the franchise tax which might be due if such tax could legally be imposed on Colonial and I believe your files will reflect that this tax return was handled in this manner for the years 1969 (Income Tax) and 1970 (Franchise Tax).

As stated in my letter under date of September 15, 1970, we recognize that the Louisiana Franchise Tax statute was amended by Act 325 of 1970, subsequent to the decision in the case entitled "Colonial Pipeline Company vs. Collector of Revenue". However, it is still our opinion, as counsel for Colonial, that the Louisiana Franchise Tax, even as amended, cannot be constitutionally levied against and collected on Colonial's operations in this state, in view of the purely interstate character of these activities.

Accordingly, in following the procedure approved and followed last year, we transmit herewith the Corporation Income and Franchise Tax Return of Colonial Pipeline Company for the years 1970 (Income Tax) and 1971 (Franchise Tax). After deduction of estimated income tax payments previously paid, there remains due the State of Louisiana a balance of $621.00 for income tax, all as shown on the return. We transmit herewith Colonial's check in such amount in full payment of the income tax as computed by Colonial. In keeping with the understanding had and the return

filed last year, we attach to the return, schedules which may be used for the purpose of determining the Franchise Tax due for 1971, if any such be due (which we deny for the reasons aforesaid).

As noted on the return, however, the amount of the Franchise Tax as so computed is not being paid, it being our position, as aforesaid, that Colonial Pipeline Company is engaged exclusively in interstate commerce and is, therefore, not subject to the Louisiana Franchise Tax, levied as it would be on this interstate business.

As indicated in my letter of September 15, 1970, Colonial was prepared to pay the Louisiana Corporation Franchise Tax for 1970 under protest, in accordance with the provisions of L.R.S. 47:1576. However, since the Legal Division has not made a final determination concerning the legal question raised by Colonial, the return was handled in the same manner as the one attached herewith, it being our understanding, under the circumstances, that no penalty would be assessed.

We are, of course, still prepared to pay the Franchise Tax for 1970 under protest in order to bring this matter to a conclusion. As soon as the Legal Division has made a final determination concerning application of the Louisiana Franchise Tax to Colonial's Louisiana activities, I would appreciate hearing from you.

Very truly yours,

R. Gordon Kaan, Jr.

RGK/ebh
Enclosures

STATE OF LOUISIANA
DEPARTMENT OF REVENUE
BATON ROUGE 70821

E. LEE AGERTON
COLLECTOR OF REVENUE

October 20, 1971

P-3

FILED IN EVIDENCE
EXHIBIT P-3
DATE March 10, 1972
Janis M. Meade
DEPUTY CLERK

Mr. R. Gordon Kean, Jr.
Sanders, Miller, Downing & Kean
Attorneys at Law
P. O. Box 1588
Baton Rouge, Louisiana 70821

Dear Mr. Kean: Re: Colonial Pipeline Company

In accordance with your letter of September 28, 1971, we discussed the question of your client's liability for Louisiana corporation franchise tax with Mr. Donald Theriot, Chief Counsel for this Department. In his opinion, your client is liable for the corporation franchise tax for 1970 and 1971.

Please, therefore, have the taxpayer forward its remittance to us for $150,719.80. This amount which is tabulated below represents the corporation franchise tax due on the basis of the figures supplied in the tax returns plus interest to October 31, 1971.

	1970	1971
Corporation Franchise Tax	$69,535.50	$66,241.50
Interest to October 31, 1971	11,299.52	3,643.28
Total	$80,835.02	$69,884.78
		80,835.02
Grand Total		$150,719.80

Please attach the enclosed copy of this letter to your reply for identification purposes.

Very truly yours,

Ben A. Grasser, Director
Corporation Income and
Franchise Tax Division

BAG:bs
Enclosure

EXHIBIT C

SANDERS, MILLER, DOWNING & KEAN
BATON ROUGE SAVINGS & LOAN BUILDING
POST OFFICE BOX 1588
TELEPHONE 348-0951
BATON ROUGE, LOUISIANA

P-4

FILED IN EVIDENCE
EXHIBIT P-4
DATE March 10, 1972
Janis M. Meade
DEPUTY CLERK

November 1, 1971

Mr. Ben A. Grasser, Director
Corporation Income and Franchise Tax Division
State of Louisiana
Department of Revenue
Baton Rouge, Louisiana 70821

RE: Colonial Pipeline Company

Dear Mr. Grasser:

With regard to the above captioned matter and your letter of October 20, 1971 concerning it, I enclose herewith letter addressed to the Collector of Revenue transmitting the tax payment alleged to be due, which payment is made under protest pursuant to the provisions of L.R.S. 47:1576. In accordance with the provisions of the statute in question, I would appreciate it if you would acknowledge receipt of the letter of protest and place the funds in escrow as required by law.

With kind personal regards.

Very truly yours,

R. Gordon Kean, Jr.

RGK/cbh
Enclosures

Letter of protest addressed to Honorable E. Lee Agerton, Collector of Revenue, dated November 1, 1971, and accompanying check of Colonial Pipeline Company in the sum of $150,719.80 referred to in said letter received this 2nd day of November, 1971.

Ben A. Grasser, Director
Corporation Income and Franchise
Tax Division

EXHIBIT D

COPY

P-5

November 1, 1971

FILED IN EVIDENCE
EXHIBIT P-5
DATE March 10, 1972
DEPUTY CLERK

Honorable E. Lee Agerton
Collector of Revenue
State of Louisiana
Capitol Annex
Baton Rouge, Louisiana 70821

Dear Mr. Agerton:

We represent Colonial Pipeline Company, a Delaware corporation, with its principal office in Atlanta, Georgia. Colonial owns and operates a large diameter pipeline system extending from Houston, Texas to the New York Harbor Area, together with various lateral lines, pumping stations, tank farms and other related facilities, all of which is used solely for the interstate transportation of refined petroleum products.

Colonial has heretofore advised Mr. Dan A. Grasser, Director of the Corporation Income and Franchise Tax Division, that it is not liable for the Louisiana Franchise Tax imposed under the provisions of L.R.S. 47:601, et seq, for the reason that Colonial is engaged exclusively in interstate business. Under date of October 20, 1971, Mr. Grasser advised Colonial's attorney, Mr. R. Gordon Kean, Jr., that, in the opinion of the Department's Chief Counsel, Colonial was subject to the franchise tax, and the tax liability for the years 1970 and 1971 was a total of $150,719.80, including interest to October 31, 1971.

In accordance with the demand contained in Mr. Grasser's letter of October 20, 1971, check of Colonial Pipeline Company in the sum of $150,719.80 is enclosed herewith. This check covers the proposed assessment for the tax years 1970 and 1971, liability for which is, of course, denied.

This payment by Colonial is made under protest in accordance with the provisions of L.R.S. 47:1576, and to avoid any claim for penalties and possible seizure of Colonial's property. Notice is hereby given of Colonial's intention to promptly file suit for the recovery of the payment made herewith, together with interest according to law.

Very truly yours,

R. Gordon Kean, Jr.
Attorney and Agent for
Colonial Pipeline Company

RGK/cbb

EXHIBIT E

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

COLONIAL PIPELINE COMPANY, INC.	:	NO. 152,892
	:	DIVISION _____
VS.	:	
	:	
E. LEE AGERTON, COLLECTOR OF REVENUE	:	Filed Jan 7, 1972

A N S W E R

Now into court through the undersigned counsel comes E. Lee Agerton, Collector of Revenue, State of Louisiana, appearing herein solely in his said official capacity and for answer to the petition herein represents that:

1.

In reference to the allegations of Paragraph 1 of the petition, it is admitted that Colonial Pipeline Company, Inc. is a Delaware corporation with its principle office located in Atlanta, Georgia; and that is now and has since 1962 been qualified with the Secretary of State; but it is denied that Colonial transacts only interstate business in the State of Louisiana.

2.

The allegations of Paragraph 2 of the petition are admitted.

3.

The allegations of Paragraph 3 of the petition are admitted.

4.

The allegations of Paragraph 4 of the petition are admitted with the exception that it is denied Colonial transacts only interstate business in Louisiana.

5.

The allegations of Paragraph 5 of the petition are admitted.

6.

The allegations of Paragraph 6 of the petition are admitted.

7.

The allegations of Paragraph 7 of the petition are admitted with the exception that it is denied that petitioner is engaged solely in interstate transportation.

8.

The allegations of Paragraph 8 of the petition are denied for a lack of information to justify a belief therein.

9.

The allegations of Paragraph 9 of the petition are denied for a lack of information to justify a belief therein.

10.

The allegations of Paragraph 10 of the petition are denied for a lack of information to justify a belief therein.

11.

The allegations of Paragraph 11 of the petition are admitted.

12.

The allegations of Paragraph 12 of the petition are denied for a lack of information to justify a belief therein.

13.

The allegations of Paragraph 13 of the petition are denied, and in answering further the Collector asserts that the case of Colonial Pipeline Co. vs. Mouton, 228 So.2d 718 (1 cir., Nov. 17, 1969), writ refused, 255 La. 474, 231 So.2d 393 (Feb. 27, 1970) dealt only with the statutory construction of LRS 47:601 prior to its amendment by Act 325 of 1970, and that the provisions of Act 325 of 1970 substantially modified the imposition provisions of LRS 47:601, thereby making plaintiff herein liable for the tax imposed by LRS 47:601 under any circumstances as can be seen by comparing LRS 47:601 prior to the amendment, a copy of which is attached hereto marked as Exhibit D-1, with the provision of Act 325 of 1970, a copy of which is attached hereto marked as Exhibit D-2.

14.

The allegations of Paragraph 14 of the petition are denied.

15.

The allegations of Paragraph 15 of the petition are denied.

16.

The allegations of Paragraph 16 of the petition are denied.

WHEREFORE, the defendant, E. Lee Agerton, Collector of Revenue, prays for judgment in his favor and against the plaintiff, Colonial Pipeline Company, Inc., rejecting all its demands and dismissing this suit at plaintiff's costs.

BY ATTORNEYS:

s/Donald C. Theriot
Donald C. Theriot

s/Ben F. Day
Ben F. Day

Attorneys for the Collector of Revenue
State of Louisiana
P. O. Box 201
Baton Rouge, Louisiana 70821

Telephone: 389-5941

C E R T I F I C A T E

I hereby certify that a copy of the foregoing answer has been served on the plaintiff herein by mailing a copy of the same, postage prepaid, to its counsel of record addressed to them as follows:

1. Mr. R. Gordon Kean, Jr.
   Sanders, Miller, Downing & kean
   P. O. Box 1588
   Baton Rouge, Louisiana 70821

2. Mr. Jack Vickney
   General Counsel
   Colonial Pipeline Company
   3390 Peachtree Road N. E.
   Lenox Towers
   Atlanta, Georgia 30326

Baton Rouge, Louisiana, this 7th day of January, 1972.

s/Donald C. Theriot
Donald C. Theriot

- - - - -

EXHIBIT D-1

§ 601. Imposition of tax

Every domestic corporation and every foreign corporation, exercising its charter, authorized to do or doing business in this state, or owning or using any part or all of its capital or plant in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter, shall pay a tax at the rate of one dollar and 50/100 ($1.50) for each one thousand dollars ($1,000.00), or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than ten dollars ($10.00) in any case. The tax levied herein is due and payable for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter within this state, or owning or using any part or all of its capital or plant in this state.

Amended by Acts 1958, No. 437, § 2.

EXHIBIT D-1

ACT No. 325

House Bill No. 1500. By: Messrs. Womack, Guidry, Munson and Ordoneaux.

AN ACT

To amend and reenact Section 601 of Title 47 of the Louisiana Revised Statutes of 1950, relative to the imposition of the corporate franchise tax, to provide for alternative bases for imposition, which are, (1) the qualification to do business in this state or the actual doing of business within this state, (2) the exercising or continuance of a corporation's charter within this state, (3) the owning or using any part or all of a corporation's capital, plant or other property in this state in a corporate capacity, and to define the terms "doing business", "domestic corporation", and "foreign corporation".

Be it enacted by the Legislature of Louisiana:

Section 1. Section 601 of Title 47 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§ 601. Imposition of tax

Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising of a corporation's charter or the continuance of its charter within this state.

(3) The owning of using any part or all of its capital, plant or other property in this state in a corporate capacity.

It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

As used herein the term "domestic corporation" shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term "foreign corporation" shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any other state, territory or district, or foreign country.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. The provisions of this Act shall be in force and effective for all taxable years beginning on or after December 31, 1969.

Approved by the Governor: July 13, 1970, at 2:15 P.M.

A true copy:

WADE O. MARTIN, JR.
Secretary of State.

Certified by the Governor as Emergency Legislation. June 24, 1970.

WADE O. MARTIN, JR.
Secretary of State.

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

DIVISION " "

COLONIAL PIPELINE COMPANY, INC — NO. 152,892

VS. — Filed Feb 8, 1972

E. LEE AGERTON, COLLECTOR OF REVENUE — PRE-TRIAL ORDER

Pre-trial conference was held before Honorable Daniel W. LeBlanc, Baton Rouge, Louisiana, on February 8, 1972, at 8:30 o'clock A.M.

R. Gordon Kean, Jr. ----- For Plaintiff

Donald C. Theriot and Ben F. Day - For Defendant, Collector of Revenue

1. PLAINTIFF'S CLAIM: This is a suit for a refund of taxes paid under protest in accordance with and pursuant to the provisions of L.R.S. 47:1576.

Colonial Pipeline Company (Colonial) is a foreign corporation with its principal office located in Atlanta, Georgia. Colonial owns and operates a pipeline system extending from Houston, Texas to the New York harbor area, together with various lateral lines, pumping stations, tank farms and other related facilities, all used solely and only for the interstate transportation of refined petroleum products.

Colonial is a "common carrier" of refined petroleum products under the jurisdiction of the Interstate Commerce Commission.

Colonial owns none of the products which it transports; all such refined petroleum products are owned by others, and are transported at rates fixed in a tariff approved by the Interstate Commerce Commission.

On May 9, 1962, Colonial qualified to do business in the State of Louisiana and has remained so qualified since that time. It facilities in this state, however, are all accessory to the transportation of refined petroleum products in interstate commerce. Colonial accepts certain deliveries of refined petroleum products from refineries in the Lake Charles and Baton Rouge areas, these products all destined for movement out of the State of Louisiana. Colonial delivers certain refined petroleum products from Texas refineries to the Baton Rouge pumping station for use in the Baton Rouge area. Colonial does not engage in any intrastate movement of refined petroleum products in the State of Louisiana.

Colonial, therefore, contends that it is not subject to the Louisiana franchise tax levied under the provisions of L.R.S. 47:601 et seq. on the "privilege" of doing business in the State of Louisiana. Colonial contends that the Collector was and is in error in construing L.R.S. 47:601, as amended by Act 325 of 1970, as levying a tax upon Colonial, because the statute does not impose any tax for the privilege of engaging exclusively in interstate commerce in this State, and any such interpretation would be contrary to the terms and meaning of the statute. Alternatively, Colonial contends that should L.R.S. 47:601, as amended, be construed as levying any tax upon Colonial (which is denied), then in such event, Colonial asserts that the statute, as so construed, violates Article I, Section 8, Clause 3 (the Commerce Clause) of the Constitution of the United States.

In the case of Colonial Pipeline Company vs. Mouton, 228 So. 2d 718, (writ refused, 231 So. 2d 393), with the comment: "There is no error of law in the judgment," the Court of Appeal, First Circuit, held that the incidence of the Louisiana Franchise Tax was upon the "privilege of doing business", and, accordingly, the proposed imposition of the tax as against Colonial was unconstitutional, being violative of the Commerce Clause of the United States Constitution. In that case, the court in recognizing that the incidence of the tax was upon the "privilege of doing business", stated:

> "* * * Even Colonial concedes that the State of Louisiana may levy a tax 'in lieu' of other taxes, on tangibles or intangibles (goodwill), or 'local incidence' or 'local activities' but this is not the issue before us. * * * This brings us right back to the undeniable fact that the statute makes no pretense of being levied upon 'local incidence' or 'local activities' but on the contrary is levied squarely upon the privilege of engaging in business in Louisiana."

The Louisiana legislature amended L.R.S. 47:601 by Act 325 of 1970. The apparent purpose of Act 325 of 1970 was to overrule Colonial vs. Mouton, supra; however, Colonial contends that the 1970 amendment did not accomplish the desired result.

The 1970 amendment did not change the operating incidence of the Louisiana Franchise tax; to the contrary the tax is still levied "squarely" upon the "privilege of doing business" in the State of Louisiana, and the several alternative bases for the tax levy, as set

forth in the 1970 amendment, each represent a mere restatement of the former statutory provisions in different form. Colonial contends, therefore, that the tax, by virtue of the 1970 amendment, is still clearly not levied as an "in lieu" tax upon tangibles or intangibles nor as a tax upon "local activities." To paraphrase Colonial vs. Mouton, supra, the amended statute makes no pretense of being levied upon "local incidence" or "local activities." On the contrary, the tax is levied squarely upon the privilege of doing or engaging in business in Louisiana; therefore, Colonial contends that the decision of the First Circuit in Colonial vs. Mouton, supra, is still controlling.

In the alternative, and only in the event it be found and held that the Louisiana corporate franchise tax, as amended by Act 325 of 1970, imposes a tax upon "local activities" or "local incidence", rather than upon the "privilege of doing business" (which is denied), then in such event, Colonial contends alternatively that the first year in which the said tax was imposed as against Colonial was the year 1970. Under these circumstances, and the provisions of L.R.S. 47:601, Colonial contends that it is only liable for the minimum tax of Ten ($10.00) Dollars for and during the year 1970.

Colonial paid the State of Louisiana the sum of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars representing the total of alleged franchise taxes due for the years 1970 and 1970 and interest. Colonial seeks a refund of that amount, together with interest thereon at the rate of two (2%) per cent per annum from November 2, 1971, until paid.

In the alternative, and only in the event it be found that the provisions of L.R.S. 47:601 are applicable to Colonial, and as so applied are constitutional (which is denied), then in that event, Colonial seeks judgment holding that the only such tax due for the year 1970 was the sum of Ten ($10.00) Dollars, and prays for a refund in the sum of Eighty Thousand Eight Hundred Twenty Five and 02/100 ($80,825.02) Dollars, representing refund of the excess corporate franchise tax paid for the year 1970, together with interest on that amount at the rate of two (2%) per cent per annum from November 2, 1971, until paid.

2. DEFENDANT'S CLAIM: Defendant, Collector of Revenue, contends that the case of Colonial Pipeline Company vs. Mouton, supra, dealt only with the statutory construction of L.R.S. 47:601 prior to its amendment by Act 325 of 1970, and that the provisions of Act 325 of 1970 substantially modified the imposition provisions of L.R.S. 47:601, thereby making Colonial liable for the tax imposed by L.R.S. 47:601. The Collector further denies that Colonial is entitled to any refund of taxes.

3. CLAIMS OF OTHER PARTIES: None.

4. ESTABLISHED FACTS:

(A) Colonial is engaged in the transportation of refined petroleum products through a pipeline located across the State of Louisiana, and owns and operates certain pumping stations and other facilities in the State of Louisiana required to move said refined petroleum products through the pipeline.

(B) The State of Louisiana levies a franchise tax designated as the Corporate Franchise Tax pursuant to and under the

provisions of L.R.S. 47:601, et seq; that L.R.S. 47:601 was amended by Act 325 of 1970.

(C) The Collector advised Colonial, by letter dated October 20, 1971, that in the opinion of chief counsel for the Collector, Colonial was liable for the corporation franchise tax for 1970 and 1971.

(D) Colonial paid the corporate franchise tax allegedly due for the years 1970 and 1971 under protest by letter dated November 1, 1971, and transmitted with said letter check of Colonial in the sum of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars, which payment was made under protest in accordance with the provisions of L.R.S. 47:1576.

(E) Corporate franchise tax allegedly due for the year 1970 was the sum of Eighty Thousand Six Hundred Thirty Five and 02/100 ($80,635.02) Dollars, including interest to October 31, 1971.

(F) Corporate franchise tax allegedly due for the year 1971 was a total of Sixty Nine Thousand Eight Hundred Eighty Four and 78/100 ($69,884.78) Dollars, including interest to October 31, 1971.

(G) The total refund to which Colonial would be entitled, if successful in these proceedings, is the sum of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars.

(H) In the event Colonial is successful only with respect to its alternative demand, the total refund which would be due under the alternative demand would be the sum of Eighty Thousand Eight Hundred Twenty

Five and 02/100 ($80,825.02) Dollars.

(I) Colonial Pipeline Company, Inc. is a Delaware corporation, with its principal office located in Atlanta, Georgia.

5. CONTESTED ISSUES OF FACT:

(A) Whether or not Colonial transacts only interstate business in the State of Louisiana.

6. CONTESTED ISSUES OF LAW:

(A) The operating incidence of the Louisiana Corporate Franchise Tax as imposed by the provisions of L.R.S. 47:601, as amended by Act 325 of 1970.

(B) Whether or not the operating incidence of the tax, by virtue of the 1970 amendment, is upon "local activities" or "local incidents" carried on by a foreign corporation doing business in this State.

(C) If the operating incidence of the tax, by virtue of the 1970 amendment, is upon "local activities", whether or not Colonial is engaged in such "local activities" in this State as to justify imposition of the tax.

(D) If the Louisiana Corporate Franchise Tax, levied by L.R.S. 47:601, as amended by Act 325 of 1970, is imposed upon Colonial, whether such imposition violates Article I, Section 8, Clause 3 (the Commerce Clause) of the Constitution of the United States.

(E) Whether or not the case of Colonial Pipeline Company vs. Mouton, supra, is controlling as the law of this case.

(F) In the further alternative, and in the event it be held that the Louisiana Corporate Franchise Tax is applicable to Colonial (which is denied) and as to applied is constitutional (which is denied), then in such event, whether or not Colonial is obligated for the entire amount of tax assessed for the year 1970, or whether under the provisions of L.R.S. 47:611, Colonial is liable in said year for only the minimum tax of $10.00.

7. EXHIBITS:

(A) For the Plaintiff:

(1) Letter dated September 15, 1970, addressed to the Director, Corporation Income and Franchise Tax Division, Department of Revenue by the attorney for Colonial, said letter annexed to the petition as Exhibit A.

(2) Letter dated September 14, 1971, addressed to the Director of Corporation Income and Franchise Tax Division by the attorney for Colonial, said letter annexed to the petition as Exhibit B.

(3) Letter dated October 20, 1971, addressed by Director, Corporation Income and Franchise Tax Division, Department of Revenue, to attorney for Colonial Pipeline Company, setting forth an assessment of One Hundred Fifty Thousand Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars, representing alleged corporation franchise tax due for the years 1970 and 1971, annexed to the petition as Exhibit C.

(4) Letter dated November 1, 1971, addressed to Director, Corporation Income and Franchise Tax Division, by attorney

for Colonial, transmitting letter of protest and payment under protest, and setting forth the acknowledgement of the Director of the receipt of same, said letter and acknowledgement being annexed to the petition as Exhibit D.

(5) Letter dated November 1, 1971, addressed to Honorable E. Lee Agerton, Collector of Revenue, paying the said franchise taxes allegedly due for the years 1970 and 1971, under protest, in accordance with the provisions of L.R.S. 47:1576, which said letter is annexed to the petition as Exhibit E.

(6) Map of Colonial's system and facilities from Houston, Texas to the New York Harbor area, which includes the route of the pipeline and the location of accessory facilities in the State of Louisiana.

(7) The written description of each of the pumping stations and other facilities which Colonial owns and operates within the State of Louisiana, showing the total investment in said facilities for the year 1970, together with the amount of ad valorem taxes paid to the State of Louisiana and other political subdivisions having authority to levy such taxes for and during the same year.

(8) Copies of the income and franchise tax returns filed by Colonial in each of the years 1970 and 1971, showing the amount of Louisiana income tax paid in each of said years.

(9) Informational brochure describing the extent and purpose of Colonial Pipeline system.

(10) Copy of the tariff filed by Colonial with the Interstate Commerce Commission showing rates authorized to be charged for the interstate transportation of petroleum products through the Colonial system to and from the various points in that system.

(11) A listing of all taxes other than the taxes which are in dispute which Colonial Pipeline has been paying and is paying to the State of Louisiana.

(12) Flow sheets showing movement of products through Colonial's Louisiana system.

(13) List of Colonial employees in the State of Louisiana and their duties.

B. For Defendant: None.

8. EXHIBIT AUTHENTICITY: Subject to the right of cross examination as to the correctness of facts and figures shown in the exhibits, it will not be necessary to call witnesses to verify the authenticity of same.

9. AMENDMENTS: No amendments to the pleadings are anticipated.

10. WITNESSES:

(A) Plaintiff may call the following witnesses:

(1) Mr. Franklin B. Whitaker

(2) Mr. John Brien

(3) Mr. Charles Graham

(B) Defendant, Collector of Revenue, may call the following witnesses: None.

11. CERTIFICATION: The usual pre-trial conference of attorneys required by Section 2 of Rule 7 of the Rules of the 19th Judicial District Court was not held, the two day period within which to submit a pre-trial order having been waived by the Court due to the short notice of the pre-trial conference.

12. ADDITIONAL MATTERS: In the event there are other witnesses to be called at the trial, their names and addresses and the general subject matter of their testimony will be reported to opposing counsel at least ten (10) days prior to trial. This restriction shall not apply to rebuttal witnesses.

The parties believe that the case can be submitted on a stipulation.

Respectfully submitted,

s/R. Gordon Kean Jr.
R. Gordon Kean, Jr. ---------- of
SANDERS, MILLER, DOWNING & KEAN
Post Office Box 1588
Baton Rouge, Louisiana 70821
Attorney for Plaintiff, Colonial Pipeline Company

s/Donald C. Theriot
Donald C. Theriot

s/Ben F. Day
Ben F. Day

Attorneys for the Collector of Revenue, State of Louisiana
Post Office Box 201
Baton Rouge, Louisiana 70821

ORDER

IT IS ORDERED that this matter be set for trial on the 10th day of March, 1972, at 9:30 o'clock A.M.

Baton Rouge, Louisiana, this 8th day of February, 1972.

s/Daniel W. LeBlanc
JUDGE, 19TH JUDICIAL DISTRICT COURT

...oOo...

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION B

COLONIAL PIPELINE COMPANY, INC.	:	NO. 152,892
VS.	:	Filed Aug 16,1972
E. LEE AGERTON, COLLECTOR OF REVENUE	:	

NOTE OF EVIDENCE
FRIDAY, MARCH 10, 1972

HONORABLE DANIEL W. LeBLANC
JUDGE PRESIDING

Appearances:

R. Gordon Kean, Jr. For Plaintiff
Sanders, Miller, Downing and Kean

Donald C. Theriot and A. Lynn Wright For Defendant

Reported By
Julia M. Meole
Court Reporter

COLONIAL PIPELINE COMPANY, INC.	:	NO. 152,892-DIVISION B
	:	19TH JUDICIAL DISTRICT
VS.	:	COURT
E. LEE AGERTON, COLLECTOR OF REVENUE	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

::

NOTE OF EVIDENCE
MARCH 10, 1972

Appearances:

R. Gordon Kean, Jr. For Plaintiff
Sanders, Miller, Downing & Kear

Donald C. Theriot and A.
Lynn Wright For Defendant

MR. KEAN:

May it please the Court, I think we are in position to stipulate on the offerings and on the matters which would form the basis of this suit, and I think, just in order to get those in the record, I'll go ahead and make those offerings now:

We would first like to offer and produce in evidence, and have it marked Plaintiff No. 1, copy of letter dated September 15, 1970, identified with the petition as Exhibit A, which is a letter written to Mr. Ben A. Grasser, Director of the Corporation Income and Franchise Tax Division, concerning Colonial's position with respect to the Louisiana franchise tax.

I would like to offer, produce and file

in evidence a copy of a letter dated September 14, 1971, marked Exhibit B as an attachment to the petition, and ask that it be marked Plaintiff No. 2.

I offer, produce and file in evidence copy of a letter dated October 20, 1971, identified with petition as Exhibit C, and ask that it be marked Plaintiff No. 3, that letter being addressed to me as counsel for Colonial Pipeline Company, making demand for the tax, and paid under protest.

I offer, produce and file in evidence copy of a letter dated November 1, 1971, addressed by myself as counsel for Colonial to Mr. Grasser, transmitting the tax payment, under protest, and containing Mr. Grasser's acknowledgment, and ask that that be marked as Plaintiff's Exhibit No. 4.

I offer, produce and file in evidence copy of a letter dated November 1, 1971, addressed to Honorable E. Lee Agerton by myself as counsel for Colonial, formally paying the tax, under protest, in accordance with the provisions of L.R.S. 47:1576 and ask that that be marked Plaintiff's Exhibit No. 5.

I offer, produce and file in evidence copy of the certificate of the corporation, addressed to the Secretary of State of the State of Louisiana, under which certificate Colonial Pipeline qualified to do business in the State of Louisiana for the purpose of conducting interstate business, and ask that that certificate together with the statement and the appointment of agent, together, be marked Plaintiff's Exhibit No. 6, and I would ask leave of Court to substitute xeroxed copies of these documents.

THE COURT:

Yes, sir.

I offer, produce and file in evidence, and ask that it be marked as Plaintiff Exhibit No. 7, eight sheets together, to be marked together as Plaintiff's Exhibit No. 7, this exhibit containing a list of all of the facilities of Colonial Pipeline Company located in the State of Louisiana, other than the pipeline itself, consisting of booster stations handling tankage, together with the evaluation of the investment in those facilities for the years 1963, 1967 and 1971. Each of these documents relating to the several stations contain a description of the stations and the operational facilities located in the station.

I produce, offer and file in evidence a memorandum prepared by Mr. J. H. Brien, Comptroller of Colonial Pipeline Company, and ask that it be marked Plaintiff's Exhibit No. 8, which lists Louisiana taxes paid by Colonial Pipeline Company in the years 1970 and 1971, being ad valorem and income taxes due and paid by the company during each of those years.

I offer, produce and file in evidence, and ask that it be marked Plaintiff's Exhibit No. 9, a map or drawing showing the schematic location of Colonial Pipeline system from Houston, Texas, to the New York harbor area and the states in which it is located, including the State of Louisiana as well as location of the several pumping stations which we have previously identified in Plaintiff's Exhibit No. 7, I think.

I offer, together, and ask that they be marked Plaintiff's Exhibit No. 10, A, B, and C, tariffs approved by the Interstate Commerce Commission relating to the transmission of products through the Colonial Pipeline system: 10-A to be the tariff identified as effective September 1, 1969; 10-B to be identified as the tariff effective August 20, 1970; and 10-C to be identified as tariff effective November 4, 1971.

I offer, produce and file in evidence, and ask that it be marked Plaintiff's Exhibit No. 11, document identified as Colonial Pipeline Company flow chart, as of June 1971, which shows the flow of the products through the Colonial system, points of injection as well as points of shipment. I think,by way of explanation to the Court, that if we look at the tariffs that are filed, you will find that there are no tariffs between Lake Charles and Opelousas and Baton Rouge, which are the only two points which receive products in the State of Louisiana, so that all of the products which come to the Opelousas and Baton Rouge points of delivery come from Texas origination points, as would be reflected by the tariffs filed in evidence.

I offer, produce and file in evidence document to be marked as Plaintiff's Exhibit No. 12, which shows a listing of the various shippers shipping refined petroleum products through the plantation system, as well as the identification initials and numbers for those products - for those companies and the products which are shipped through the line which are used in connection with computer operations of the system, the computer being operated out of Atlanta.

I offer produce and file in evidence, and ask that it be marked Plaintiff's Exhibit No. 13, a list of the Colonial Pipeline employees located in the State of Louisiana, together with a description of the duties of each of those employees.

I offer, produce and file in evidence, and ask that it be marked Plaintiff's Exhibit No. 14, an informational brochure containing facts about Colonial Pipeline Company which shows among other things the length of the main line and the length of the stub line.

I offer, produce and file in evidence a copy of the corporation income and franchise tax return filed by Colonial for the year 1969 and the year 1970, with the supporting schedules attached, and ask that it be marked Plaintiff's Exhibit No. 15.

I also offer, produce and file in evidence the copy of the corporation income and franchise tax return for the years 1970, 1971 and ask that it be marked Plaintiff's Exhibit No. 16.

It is further stipulated by and between counsel that, except for the following changes in operations of Colonial Pipeline in the State of Louisiana, all of the testimony offered in connection with the first Colonial suit, being No. 116,840 on the docket of this Court, is equally applicable to this case, the changes being as follows:

1. At the time of the first suit, the administrative offices of the Western Division of Colonial Pipeline Company were located in the State of Louisiana, and I might say, parenthetically, were actually in the

same offices we're in right now. These offices are no longer located in the State of Louisiana, and there are no administrative personnel of Colonial Pipeline Company in the State of Louisiana - there were no administrative personnel of Colonial Pipeline Company in the State of Louisiana during the years 1970 and 1971. The field personnel who are listed in the list of Colonial employees, those that are located west of the Mississippi River in the State of Louisiana report to administrative offices in Beaumont, Texas, and those who are located east of the Mississippi River in the State of Louisiana report to administrative offices in Hattiesburg, Mississippi.

2. There has been an increase in handling tankage at the Baton Rouge station, located north of Baton Rouge, which increase is reflected by the increase in investment as shown in the document which describes the Baton Rouge station.

Since the operations of Colonial Pipeline Company are otherwise the same in the State of Louisiana as they were at the time of the first suit, I would like to offer, produce and file in evidence a copy of the transcript of testimony in that suit and ask that it be marked Plaintiff's Exhibit No. 17.

I believe that's it, Your Honor.

THE COURT:

You want to stipulate to the mileage?

MR. KEAN:

Oh, yes, I'm sorry.

Counsel further stipulate that the total mileage of the pipeline owned and operated by Colonial in the State of Louisiana is 258 miles, including both the main line and the lateral line.

MR. THERIOT:

The Collector of Revenue accepts the stipulation as presented by Mr. Kean with the exceptions as so stated by him.

MR. KEAN:

As so stated by what?

MR. THERIOT:

As so stated by you.

THE COURT:

All right.

MR. KEAN:

I had hoped to have a brief completed by this time to furnish to the Court but since there wasn't any cause . . . . I've got it just about done, and I think I can have it done and available to the Court and Mr. Theriot by the end of the day. It would seem to me that it might be helpful to the Court to have the benefit of briefs, and then if you think that oral argument, at that point, would be helpful to the Court, we would then be available to argue and the Court could simply take it under advisement and decide it on briefs to be filed. I think to spend a lot of time this morning in attempting to argue the case might just

not serve any useful purpose.

THE COURT:

You want to submit a brief, Mr. Theriot?

MR. THERIOT:

Yes, I request fifteen days to submit a reply brief to Mr. Kean.

THE COURT:

All right, today is the tenth. You will have until Monday, the twenty-seventh. I don't anticipate oral argument, but by the time Mr. Theriot's brief comes in, and I have a chance to read it, I'll either advise you, then, that I'll take it under advisement officially or I will set a time for argument.

MR. KEAN:

I would like to ask, I don't know if it will be necessary, but if a couple of days are necessary to file a reply brief, I think I have anticipated in the brief I am filing the arguments of Mr. Theriot --

THE COURT:

Yes, sir, I think with all the stipulations, the briefs will be very short.

MR. KEAN:

Thank you very much, Judge.

NOTE OF EVIDENCE CONCLUDED

- - - - -

P-6

FILED IN EVIDENCE
EXHIBIT P-6 (1 of
DATE March 10, 19
Lucia M. Meade
DEPUTY CLERK

APPOINTMENT OF AGENT

PURSUANT TO PROVISIONS OF R.S. 1950, 12:206

(TO BE FILED WITH AGENT)

COLONIAL PIPELINE COMPANY

KNOW ALL MEN BY THESE PRESENTS:

That SUMTER D. MARKS, JR., LOUIS B. CLAVERIE, ASHTON PHELPS and J. BARNWELL PHELPS, with offices located at 420 Hibernia Building, NEW ORLEANS 12, LOUISIANA, are hereby designated as agents of this corporation for the objects and purposes set forth in R.S. 1950, 12:206, Subds. B, C and D, and their aforesaid office is hereby designated as the office of said corporation for all the objects and purposes of said section.

COLONIAL PIPELINE COMPANY

By _____
SEcretary

Dated May 7, , 1962.

La.-221-5/1/61

FILED IN EVIDENCE
EXHIBIT P-6 (Copy)
DATE March 10, 1972
Lucia M. Meade
DEPUTY CLERK

STATEMENT

In Compliance With R. S. 1950, Title 47, Chapter 3, Part I

TO BE FILED WITH THE SECRETARY OF STATE OF THE STATE OF LOUISIANA, BATON ROUGE, LOUISIANA, AT THE TIME OF MAKING APPLICATION TO DO BUSINESS IN LOUISIANA, BY ALL FOREIGN CORPORATIONS.

State of Georgia
County of Fulton

Before me, the undersigned authority a notary public in and for said County and State, duly commissioned and qualified, personally came and appeared Karl T. Feldman, Vice President and Jack Vickrey, Secretary, who being by me first duly sworn, depose and say:

That they are the Vice President and Secretary, respectively, of the COLONIAL PIPELINE COMPANY, a corporation organized under the laws of the State of Delaware, domiciled at Wilmington, with its principal offices at 100 West Tenth Street, City of Wilmington;

That the total amount of the authorized capital stock of the said COLONIAL PIPELINE COMPANY is 40 Million dollars; that the value of the gross assets of the said corporation employed in the State of Louisiana is None dollars; and that the total value of the gross assets of the said corporation wherever employed is 4,022,900 dollars.

That the portion of capital stock represented by Assets in Louisiana is None dollars.

Karl T. Feldman
Vice President.

Jack Vickrey
Secretary.

Sworn to and subscribed before me on this 7 day of May, 1962

Notary Public.

Fee $ 0

Notary Public, Georgia, State at Large
My Commission Expires Aug. 1, 1962

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FILED IN EVIDENCE
EXHIBIT P-6 (3 of 4)
DATE March 10, 1972
Julia M. Meade
DEPUTY CLERK

THIS FORM PREPARED AND PUBLISHED BY
WADE O. MARTIN, JR.
SECRETARY OF STATE
STATE OF LOUISIANA
BATON ROUGE

POWER OF ATTORNEY
As Required By R. S. 1950, 12:202

R.S. 12:202. Documents to be filed with Secretary of State; agent for service of process

A. As a condition precedent to being authorized to do business in this state, every corporation, except corporations engaged in the business of insurance in all its forms, shall file with the Secretary of State the following documents:

1. A written declaration stating its domicile, the place in the state where it intends to do or is doing business, the intended place or the actual place of its principal business establishment in this state and outside of this state, and the name and address (including street and number, if any) of its agent in this state upon whom process may be served.

2. A written power of attorney appointing the agent upon whom process may be served. Such agent may be an individual who is a resident of this state, or a corporation authorized to transact business in this state and authorized by its charter to act as the agent of a corporation for service of process. Before any corporation may be appointed the agent upon whom process may be served, it shall file with the Secretary of State a certificate setting forth the names of at least two individuals at its address as set forth in the declaration filed pursuant to paragraph 1 of this Subsection, each of whom is authorized to receive any process served on it as such agent, and the corporation may by filing an amended certificate substitute or add the names of other individuals.

3. A certified copy of a resolution of the board of directors of the foreign corporation. This resolution, which shall accompany the power of attorney required by paragraph 2 of this Subsection shall agree that any lawful process against the corporation which is served upon the agent shall be a valid service upon the corporation. This authority shall continue in force and be maintained as long as any liability growing out of or connected with the business done by the corporation in this state remains outstanding against the corporation.

4. A certified copy of its articles of incorporation, together with a certified copy of its certificate of incorporation. Subsequent modification of the articles or certificate of incorporation shall be filed as provided herein. Until filed, they shall be ineffective in this state.

Know All Men By These Presents:

That COLONIAL PIPELINE COMPANY

a corporation organized under the laws of the State of Delaware
domiciled at 100 West Tenth Street (Street), Wilmington (City), State of Delaware, and having its principal business establishment in the City of Atlanta, at 3330 Peachtree Rd., N. E. (Street), State of Georgia / Interstate / Interstate, doing business, or being about to do business in the State of Louisiana in conformity with the laws thereof, does, pursuant to the laws of said State, hereby make this its written declaration that it is doing business at the following place or places in the State of Louisiana, to-wit:

Baton Rouge (City) and elsewhere throughout the State (Street)

(City) (Street)

(City) (Street)

that the place of its principal business establishment in the State of Louisiana is

does 315 Baton Rouge Savings & Loan Assn. Bldg., Baton Rouge (Street) (City)

and that it does hereby make, constitute and appoint C T CORPORATION SYSTEM of the City of New Orleans 12

420 Hibernia Building (City)

Parish of Orleans (Street Address)

lawful ATTORNEY, in and for the State of Louisiana, on whom all process of law, whether mesne or final, against said Corporation, may be served in any action against said Corporation in the State of Louisiana, subject to and in accordance with all the provisions of law of said State of Louisiana now in force and such acts as may be hereinafter passed amendatory thereof and supplementary thereto, and the said Attorney is hereby duly authorized and empowered, as the Agent of said Corporation, to receive service of process in all cases as provided for by the Laws of the State of Louisiana, and such services shall be deemed valid personal service and binding upon this Corporation, agreeably to the Constitution of Louisiana, and in compliance with R. S. 1950, 12:202. This appointment is to continue in force for the period of time and in the manner provided for by the statutes of the State of Louisiana, and until another Attorney shall be duly and regularly substituted.

IN WITNESS WHEREOF, The said Corporation, in accordance with a resolution of its Board of Directors, duly passed on the 6th day of March A. D., 19 62, (a certified copy of which is hereto attached), has to these presents affixed its corporate Seal, and caused the same to be subscribed and attested to by its President and Secretary at the City of Atlanta in the State of Georgia on the 7th day of May A. D., 19 62.

(SEAL)

[illegible] Secretary

[illegible] Vice President

Form 44

CERTIFIED COPY OF A RESOLUTION DULY PASSED BY THE BOARD OF DIRECTORS OF THE

COLONIAL PIPELINE COMPANY

CORPORATION ON THE 6th DAY OF March 19 62

At a meeting of the Board of Directors of COLONIAL PIPELINE COMPANY

held on the 6th day of March

A. D., 19 62, at the office of the Corporation, in the City of Atlanta

State of Georgia, a quorum of said Board being present, on motion the following resolution was duly passed:

"*Resolved*, That this Corporation having been admitted or having applied for admission to transact business in the State of Louisiana, in conformity with the laws thereof, hereby makes, constitutes and appoints

C T CORPORATION SYSTEM

420 Hibernia Building
(Street Address)

of the City of New Orleans 12 Parish of Orleans its true and lawful ATTORNEY in and for the State of Louisiana, with the powers hereinafter set forth; and hereby authorizes the President and Secretary, under the corporate seal of the Corporation to file a written declaration in the office of the Secretary of State, setting forth the place or locality of the domicile of this corporation, the place or places in the State of Louisiana where it is doing business, and the name of its agent in said State upon whom process may be served, and for said purpose particularly does here authorize the said President and Secretary, under the corporate seal of the Corporation, to make, constitute and appoint

C T CORPORATION SYSTEM

420 Hibernia Building
(Street Address)

of the City of New Orleans 12 Parish of Orleans its true and lawful ATTORNEY, in and for the State of Louisiana, on whom all process of law, whether mesne or final, against the said Corporation may be served in any action against said Corporation in the State of Louisiana, subject to and in accordance with all the provisions and statutes and laws of said State of Louisiana now in force, and such Acts as may hereafter be passed, amendatory thereof and supplementary thereto; and the said Attorney to be duly authorized and empowered, as the Agent of said Corporation, to receive service of process, in all cases as provided for by the laws of the State of Louisiana, and such service to be deemed valid personal service and binding upon this Corporation agreebly to the Constitution of Louisiana, and in compliance with R. S. 1950, 12:202. Said appointment is to continue in force for the period of time and in the manner provided for by the Statutes of the State of Louisiana, and until another Attorney shall be duly and regularly substituted."

I hereby certify that the above is a correct copy of the Resolution of the Directors of said Corporation, duly adopted, authorizing the appointment of an attorney for the State of Louisiana.

(SEAL) Witness my hand and seal of said COLONIAL PIPELINE COMPANY Corporation at Atlanta this day of , 1962

, Secretary

STATE OF Georgia
COUNTY OF Fulton } SS
CITY OF Atlanta

On this day of , 1962, before me, the subscriber, Notary duly appointed to take proof and acknowledgment of deeds and other instruments, came Karl T Tollmar Vice President, and Jack Vickrey, Secretary of the COLONIAL PIPELINE COMPANY

Corporation, to me personally known to be the individuals described in and who executed the preceding instrument, and they each duly acknowledged to me, the execution of the same, and being by me duly sworn severally and each for himself deposeth and saith that they are the officers of the Corporation aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of the said Corporation; and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal at the

(SEAL) City of Atlanta the day and year first above written.

[illegible], Notary Public
My Commission Expires Aug. 1, 1965

FILED IN EVIDENCE
EXHIBIT P-7 (Supt.)
DATE March 10, 1972
Julia M. Moore
DEPUTY CLERK

P-7
PARISH OF EVANGELINE
EXHIBIT P-7 (1078)
DATE March 10, 1972
DEPUTY CLERK

CHURCH POINT STATION

Church Point Station is located in the NW/4 of Section 17, Township 7 South, Range 2 East, Arcadia Parish, Louisiana, on an approximate 2.954 acres owned by Colonial Pipeline Company.

The station is a booster station utilizing four (4) single stage centrifugal pumps to handle the products. The pumps are powered by one (1) 2000 HP and three (3) 5000 HP electric motors. The total available horsepower is 17,000.

The pumping equipment is controlled from an aluminum sheet metal control building containing approximately 1974 square feet.

Tankage at Church Point Station consists of two (2) 500 barrel transmix tanks, which are used to hold products during a drain-up of the station piping.

In addition to the transmix tanks, there is one (1) 100 barrel sump tank used for normal operation drainage. Any product received into the heretofore mentioned tanks is pumped back into the main line for further transporting.

Total Investment, 1963	$611,632.00
Total Investment, 1967	$625,063.00
Total Investment, 1971	$845,776.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (2 of 2)
DATE March 10, 1976
Julia M. Marler
DEPUTY CLERK

BATON ROUGE STATION

Baton Rouge Station is located in Section 51, Township 4 South, Range 2 West, East Feliciana Parish, Louisiana, on an approximate 29.86 acres of land owned by Colonial Pipeline Company.

The station is a combination origin, injection, booster, receipt and stub line station utilizing four (4) single stage and one (1) five stage centrifugal pumps to handle the products. The pumps are powered by one (1) 500 HP, one (1) 1250 HP, one (1) 2000 HP, two (2) 5000 HP, one (1) 1500 HP and one (1) 4000 HP electric motors. The total available horsepower is 19,250.

The pumping equipment is controlled from an aluminum sheet metal control building containing approximately 1977 square feet, and the quality of the product is sampled in an aluminum sheet metal sample building containing approximately 127 square feet.

Tankage at this location consists of five (5) 17,000 barrel, two (2) 24,000 barrel, and one (1) 43,000 barrel to receive products from the main line. The products received in this tankage is then pumped through a stub line to Colonial Pipeline Company's Baton Rouge Delivery Facilities. In addition to the receipt tankage, there are also two (2) 500 barrel transmix tanks which are used to hold product during a drain-up of the station piping or a spill, and one (1) 60 barrel and two (2) 100 barrel sump tanks used for normal operational drainage. Product accumulated in the transmix or sump tanks is pumped back into the main line for further transporting.

Also at Baton Rouge is a tank farm serving a second 36" line from Baton Rouge to Atlanta. Fifteen tanks serve this new line sized as listed below:

5	-	120,000 bbl.
2	-	152,000 bbl.
2	-	172,000 bbl.
3	-	218,000 bbl.
2	-	180,000 bbl.
1	-	80,000 bbl.
15	-	2,142,000 bbl.

When Baton Rouge Station is used as an origin or injection station, the products being received into the main line are measured by four (4) 16" turbine meters, which are calibrated with a 75 barrel prover loop.

The product being removed from the main line into receiving tanks at this location also passes through turbine meters, which are used for flow control and volumetrical measurement requirements.

As part of the Baton Rouge Station, Colonial leases a site comprising 0.406 acres in East Baton Rouge Parish, which is a delivery point for Texaco and Gulf products received from Texas refineries. This facility utilizes two (2) 6" positive displacement meters, calibrated with a 20 barrel prover tank, to measure products delivered into tankage owned by others.

The meter controls are located, and the quality of the product is sampled, in a combination aluminum sheet metal control-sample building containing approximately 506 square feet.

The tankage owned by Colonial at this location consists of one (1) 35 barrel sump tank which handles normal operational drainage or is used to hold product, during a drain-up of delivery facility piping or a spill. The product received in the sump tank is pumped into tankage owned by others.

Total Investment, 1963	$1,624,774.00
Total Investment, 1967	$2,230,802.00
Total Investment, 1971	$4,417,130.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (3 of 8)
DATE March 10, 1972
Josie M. Meade
DEPUTY CLERK

WELSH STATION

Welsh Station is located in the NW corner of NW/4 of Section 6, Township 9 South, Range 4 West, Jefferson Davis Parish, Louisiana, on an approximate 3.72 acres of land owned by Colonial Pipeline Comp

The station is a booster station utilizing four (4) single stage centrifugal pumps to handle the products. The pumps are powered by one (1) 2000 HP and three (3) 5000 HP electric motors. The total available horsepower is 17,000.

The pumping equipment is controlled from a masonary building containing approximately 989 square feet.

Tankage at Welsh Station consists of one (1) 625 barrel transmix tank, which is used to hold product during drain-up of the station piping. In addition to the transmix tank, there is one (1) 100 barrel sump tank used for normal operation drainage. Any product received in the heretofore mentioned tanks is pumped back into the main line for further transporting.

Total Investment, 1963	$9,984.00
Total Investment, 1967	$1,120,896.00
Total Investment, 1971	$1,074,898.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (4 of 8)
DATE March 10, 1972
Josie M. Meade
DEPUTY CLERK

FELIXVILLE STATION

Felixville Station is located in Section 58, Township 2 South, Range 3 East, East Feliciana Parish, Louisiana, on an approximate 8.714 acres of land owned by Colonial Pipeline Company.

The station is a booster station utilizing four (4) single stage centrifugal pumps to handle the products. The pumps are powered by one (1) 2000 HP and three (3) 5000 HP electric motors. The total available horsepower is 17,000.

The pumping equipment is controlled from a masonary building containing approximately 989 square feet.

Tankage at Felixville Station consists of one (1) 625 barrel transmix tank, which is used to hold product during drain-up of the station piping. In addition to the transmix tank, there is one (1) 100 barrel sump tank used for normal operation drainage. Any product received in the heretofore mentioned tanks is pumped back into the main line for further transporting.

Total Investment, 1963	$4,741.00
Total Investment, 1967	$1,138,117.00
Total Investment, 1971	$1,140,110.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (5 of 8)
DATE March 14, 1972
Josie M. Poole
DEPUTY CLERK

KROTZ SPRINGS STATION

Krotz Springs Station is located in Section 8, Township 6 South, Range 7 East, St. Landry Parish, Louisiana, on an approximate 5.782 acres of land owned by Colonial Pipeline Company.

The station is a booster station utilizing four (4) single stage centrifugal pumps to handle the products. The pumps are powered by one (1) 2000 HP and three (3) 5000 HP electric motors. The total available horsepower is 17,000.

The pumping equipment is controlled from a masonary building containing approximately 989 square feet.

Tankage at Krotz Springs Station consists of one (1) 625 barrel transmix tank, which is used to hold product during drain-up of the station piping. In addition to the transmix tank, there is one (1) 100 barrel sump tank used for normal operation drainage. Any product received in the heretofore mentioned tanks is pumped back into the main line for further transporting.

Total Investment, 1963	$24,972.00
Total Investment, 1967	$1,239,628.00
Total Investment, 1971	$1,238,633.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (6 of 8)
DATE March 14, 1972
Josie M. Poole

OPELOUSAS DELIVERY FACILITY

Opelousas Delivery Facility is located in Section 142, Township 6 South, Range 4 East, St. Landry Parish, Louisiana, on an approximate 0.225 acres of land owned by Colonial Pipeline Company.

Opelousas Station is a delivery point that utilizes two (2) 8" turbine meters, calibrated with a 36 barrel prover loop to measure the products being delivered into tankage owned by others.

The meter controls are located, and the quality of the product is sampled, in a combination aluminum sheet metal control-sample building. The building contains approximate 506 square feet.

The tankage owned by Colonial at this location consists of one (1) 30 barrel sump tank which handles normal operational drainage or is used to hold product during a drain-up of delivery facility piping or a spill. The product received in the sump tank can either be pumped into tankage owned by others or back into the main line for further transporting.

Total Investment, 1963	$106,903.00
Total Investment, 1967	$112,375.00
Total Investment, 1971	$186,495.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (7 of 8)
DATE March 10, 19
Julia M. Mark
DEPUTY CLERK

LAKE CHARLES STATION

Lake Charles Station is located in SE/4 of SE/4 Section 24, township 10 South, Range 10 West, Calcasieu Parish, Louisiana on an approximate 3.205 acres of land leased from Cities Service Refinery Corporation.

The Station is a combination origin, injection, and booster station utilizing four (4) single stage centrifugal pumps to handle the products. The pumps are powered by one (1) 1250 HP electric motor, two (2) 7000 HP and one (1) 7200 HP gas turbines. The total available horsepower is 22,450.

The pumping equipment is controlled from an aluminum sheet metal control building containing approximately 1977 square feet, and the quality of the product is sampled at an aluminum sheet metal sample building containing approximately 127 square feet.

Tankage at Lake Charles Station consists of two (2) 500 barrel transmix tanks which are used to hold product during a drain-up of the station piping. In addition to the transmix tanks, there is one (1) 100 barrel and one (1) 60 barrel sump tank used for normal operational drainage. Any product received in the heretofore mentioned tanks is pumped back into the main line for further transporting.

When Lake Charles is used as an origin or injection station, the products being received into the main line are measured by four (4) 16" turbine meters, which are calibrated with a 75 barrel prover loop.

In addition to its other designations, Lake Charles Station is a Scraper Trap Station and is used to receive or send scrapers, batch separators, or line cleaning devices.

Total Investment, 1963	$2,519,714.00
Total Investment, 1967	$2,541,596.00
Total Investment, 1971	$3,601,653.00

TEH/grb

February 24, 1972

FILED IN EVIDENCE
EXHIBIT P-7 (8 of 8)
DATE March 10, 1972
Julia M. Mark
DEPUTY CLERK

P-13

COLONIAL PIPELINE COMPANY

Date March 2, 1972

To C.E. Graham

From T.H. Norris

Subject

File:

The following is a list of Colonial employees by location in the State of Louisiana and a description of duties for each classification.

Employee	Classification	Location
G.V. Keith	(1) Operating Supr.	Lake Charles Sta.
J. Arceneaux	(2) Operator A	" " "
C.C. Burnett	" "	" " "
A. Hebert, Jr.	" "	" " "
W.J. Legnion	" "	" " "
G.A. Derouen	(3) Utilityman A	" " "
G.T. Nelson	" "	" " "
L.E. Ezell	" "	" " "
W.R. Bratton	(5) Electrical Tech.	" " "
F.D. Chatagnier	(4) Sr. Operator	Church Pt. Sta. & Opelousas D.F.
J. Carmical	(5) Mechanical Tech.	" " "
T.H. Mills	(5) Electrical Tech.	" " "
R.W. Nash	(1) Operating Supr.	Baton Rouge Sta.
L.N. Jones	(1) Chief Operator	" " "
R.H. Martin	(2) Operator A	" " "
M.J. Carter	" "	" " "
L.C. Hicks	" "	" " "
H.C. Faulk	" "	" " "
M.D. Dugger	(2) Operator B	" " "
A.J. Dupuis	" "	" " "
R.L. Harris	" "	" " "
R.D. Moore	" "	" " "
D.L. Kay	(3) Utilityman A	" " "
D.L. Merritt	" "	" " "
J.R. Wiggins	" "	" " "
J.R. Gunter	" "	" " "
R.G. Sharon	(5) Mechanical Tech.	" " "
C.W. Ritter	(5) Electrical Tech.	" " "
M. Suire	(4) Sr. Operator	Baton Rouge Del. Fac.
H.E. Gay	" "	Welsh Sta. (Jennings)
M.G. Major	" "	Krotz Springs Sta.
J.F. Tipton	" "	Felixville Sta.

FILED IN EVIDENCE
EXHIBIT P-13 (1 of 2)
DATE March 10, 1972
Julia M. Moore
DEPUTY CLERK

C.E. Graham -2- March 2, 1972

Description of duties:

(1) Operating Supervisors and Chief Operators

Supervise employees in the operation and maintenance of a pipeline system engaged in the transportation of refined petroleum products through the State of Louisiana. The system includes 36" & 6" diameter pipelines, pumping stations with pumps powered by electricity or gas turbines used to boost products through the pipelines, delivery facilities for delivering products from the pipelines to shippers and the necessary electrical, electronic and mechanical equipment to operate the system, including remote operations from a central dispatching department at Atlanta, Georgia.

(2) Operators A & B

Operate pumping stations staffed on an 8-hour shift basis, 24 hours a day, 7 days per week. Performs product testing, makes product cuts, gauges tanks, calibrates meters and performs routine facility maintenance.

(3) Utilityman

Provide vacation and other relief for Operators B and minor maintenance of facilities.

(4) Senior Operators

At pumping stations, responsible for operations of automated booster station, including checking and reporting equipment malfunctions. Also performing minor preventative maintenance and repair work. At delivery facilities, responsible for these same duties plus sampling products, making cuts, maintaining quality control, proving meters and preparing run tickets.

(5) Electrical and Mechanical Technicians

Responsible for preventative maintenance and repairs to all electronic, electrical and mechanical equipment in the system.

T.H. Norris

ELC/jyt

FILED IN EVIDENCE
EXHIBIT P-13 (2 of 2)
DATE March 10, 1972
Julia M. Moore
DEPUTY CLERK

New Colonial Pipeline From Texas to New York Hailed at Houston Meet

Pipeline Involves 17,000 Properties

Texas-to-New York Project Reviewed

HOUSTON (AP) — The

DALLAS, Tex. (AP) — It took

Fred J. Collins said about the

Mammoth Pipeline

Nears Completion

COLONIAL HAS MADE NEWS FROM THE START

In New Concept Of Oil Moving

ATLANTA, Ga. (Special)—

HOUSTON, Tex. (AP) —

MIGHTY YARD WIDE

Colonial Pipeline Biggest In World

PITTSBURGH — The

WASHINGTON — The

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FILED IN EVIDENCE
EXHIBIT P-[illegible]
DATE [illegible]
DEPUTY CLERK

FACTS ABOUT COLONIAL PIPELINE

A Yard-Wide Pipe Dream Come True

Colonial is a common carrier, regulated by the Interstate Commerce Commission. Space in the line is available on the same basis to all shippers, and is not limited to use by its stockholder companies. At the present time, Colonial provides a transportation service for twenty-three shippers.

THE YARD-WIDE FACTS

Company organized	March 6, 1962
Groundbreaking	June 20, 1962
Completion of initial construction	February 2, 1965
Capital investment	$538 million
Length of main line	1,991 miles
Length of stub lines	1,534 miles
Number of pump stations	84
Total pumping horsepower	826,075 h.p.
Number of delivery terminals	194
Number of employees	585
Transportation time - Houston to New York	12 days
Main line diameters:	
Houston, Texas, to Greensboro, N.C. (1,048 Miles)	36 inches
Baton Rouge, La., to Atlanta, Ga. (461 Miles)	36 inches
Greensboro to Baltimore Md. (288 Miles)	32 inches
Baltimore to Linden, N.J. (194 Miles)	30 inches

Delivery capacity: more than 1,464,000 barrels every day.

EXPANSION COMES YEARS EARLY

Shipper demand equaled Colonial's initial capacity, enormous though it was, in the first year of operation. This level of demand had not been anticipated for several years. To meet shipper requirements, four major expansion programs were undertaken, with the last to be completed by mid-1972. The cost of these expansion programs amounted to $161 million, nearly half as much as the cost of initial construction. Thirty-four new booster stations have been built and total pumping horsepower was more than doubled. 461 miles of main line and 225 miles of stub lines have been added, and shipping capacity increased 85% from 792,000 barrels a day to 1,464,000 barrels a day. (A barrel equals 42 gallons.)

STOCKHOLDERS

The American Oil Company	Mobil Pipe Line Company
Atlantic Richfield Company	Phillips Investment Company
BP Oil Corporation	Texaco Inc.
Cities Service Company	The Toronto Pipe Line Company
Continental Pipe Line Company	Union Oil Company of California

Colonial is headquartered at 3390 Peachtree Road, N.E., P.O. Box 18855, Atlanta, Georgia 30326. (404-261-1470)

PRESIDENT & CHIEF EXECUTIVE OFFICER	Fred F. Steingraber
VICE PRESIDENT, OPERATIONS	Glenn H. Giles
VICE PRESIDENT AND GENERAL COUNSEL	Jack Vickrey
VICE PRESIDENT, ADMINISTRATION	A. E. "Gene" Wooster

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The Company has two regional offices:

Western Region	6075 Roswell Road, N.E. Atlanta, Ga. 30328 404—252-1100 MANAGER—D. F. Smalley ASSISTANT MANAGER—T. H. Norris
Eastern Region	5001 West Broad Street P.O. Box 8538 Richmond, Va. 23226 703—282-9771 MANAGER—C. M. Brecheisen ASSISTANT MANAGER—W. J. Reid

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P-15

STATE OF LOUISIANA

CORPORATION INCOME AND FRANCHISE TAX RETURN

INCOME TAX RETURN—1969 Or Other Taxable Year	FRANCHISE TAX RETURN—1970 Or Other Taxable Year
BEGINNING ____ 1969	BEGINNING ____ 1970
ENDED ____ 1970	ENDING ____ 1971

POSTED

1. BUSINESS CORP NUMBER: 4060

2. EMPLOYER IDENTIFICATION NUMBER: 58-0863362

NAME: Colonial Pipeline Company

NUMBER AND STREET: 3390 Peachtree Road, N.E.

CITY OR TOWN AND STATE: Atlanta, Georgia — ZIP CODE: 30326

THIS RETURN MUST BE FILED WITH THE COLLECTOR OF REVENUE P. O. BOX 201 BATON ROUGE, LA. 70821

Please Answer Each Question Carefully

A. Date and State of Incorporation: Delaware - June 8, 1961

B. Principal Place of Business: Atlanta, Georgia

C. Principal kind of business (check only one)

- [ ] Air Transportation
- [X] Pipeline Transportation
- [ ] Other Transportation
- [ ] Service Enterprise
- [ ] Loan Business
- [ ] Manufacturing
- [ ] Merchandising and Other

D. Trade Name, If Different From Corporate Name: N/A

E. Did The Internal Revenue Service, During The Current Year Examine Your Federal Income Tax Returns for Any Prior Years? Yes

If So, Please Indicate Years Examined and Amounts of any change in tax liability. No tax liability, if any, has been determined as yet. 1962-1968.

F. Parishes In Which Property Is Located: Schedule #4

G. Did you at the end of the taxable year own directly or indirectly 50% or more of the voting stock of any corporation?
[X] Yes [ ] No

Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50% or more of your voting stock?
[ ] Yes [X] No

If the answer to either question is "Yes," attach a schedule showing name, address and percentage owned. Schedule #6

H. Does This Corporation File as a "Small Business Corporation" for Federal Tax Purposes under IRC Subchapter "S"? No

I. Federal Taxable Income ..... $ 22,797,508

J. Federal Income Tax ..... $ 8,246,764

COMPUTATION OF LOUISIANA INCOME TAX

1. Taxable Net Income (Amount of Schedule E, Line 30 or Schedule P, Line 36, Whichever is Applicable)	$ 1,386,020	
2. Amount of Tax (Line 1 Taxable at 4%)	$ 55,441	
3. ~~Penalty for Return Delinquent~~ LESS ESTIMATED PAYMENT	53,000	
4. Interest (6% Per Annum From Due Date of Return to Date of Payment)	49	
5. Total Income Tax, Penalty and Interest (Lines 2, 3 and 4)		$ 2,490

COMPUTATION OF LOUISIANA CORPORATION FRANCHISE TAX

6. Taxable Capital Stock, Surplus, Undivided Profits and Borrowed Capital (Schedule A, Line 32, Column 3 or Schedule O, Line 2, Whichever is Applicable)	$	
7. Amount of Assessed Value of Real and Personal Property in Louisiana For 1969	$ 7,761,990	
8. Corporation Franchise Tax Liability—(A) Line 6 or 7, Whichever is Greater, Multiplied By $1.50 For Each $1,000.00 or Major Fraction Thereof or (B) The Minimum Tax of $10.00. Enter Amount of (A) or (B), Whichever is Greater		
9. Penalty—If Return is Delinquent (5% Per Each 30 Days or Fraction Thereof, Not to Exceed 25% of Line 8)		
10. Interest (6% Per Annum From Due Date of Return to Date of Payment)		
11. Total Franchise Tax, Penalty and Interest (Lines 8, 9 and 10)		0
12. Total Amount Due (Line 5 Plus Line 11) (Make Remittance Payable to Collector of Revenue, State of Louisiana)		$ 2,490

COLONIAL PIPELINE COMPANY IS ENGAGED EXCLUSIVELY IN INTER STATE COMMERCE AND IS THEREF NOT SUBJECT TO THE LOUISIANA FRANCHISE TAX ON INTERSTATE BUSINESS. HOWEVER, COLONIAL ANNEXES HERETO SCHEDULES SHOWING BASIS FOR COMPUTATION OF THE FRANCHISE TAX IF DUE, LIABILITY THEREFOR BEING DENIED AS AFORESAID.

SIGNATURE AND VERIFICATION

I declare under the penalties for filing false reports that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has knowledge.

A. E. Wooster — Vice President — 9-11-70
(SIGNATURE OF OFFICER) (TITLE) (DATE)

(TREASURER OR ASST. TREASURER) — 9-11-70
(DATE)

(INDIVIDUAL OR FIRM SIGNATURE OF PREPARER) (DATE) (ADDRESS)

R 6420

FILED IN EVIDENCE
EXHIBIT P-15 (10-6)
DATE March 10, 1972
Julia M. Meade
DEPUTY CLERK

SCHEDULE A—Balance Sheets and Franchise Taxable Base

ASSETS	1. BEGINNING OF YEAR	2. END OF YEAR	3. END OF YEAR
1. Cash	1,017,388	1,564,293	
2. Notes and Accounts Receivable	12,995,308	13,890,549	
3. Reserve for Bad Debts	( )	( )	
4. Inventories			
5. Investment in U.S. Government Obligations	970,205	2,616,463	
6. Other Current Assets (Attach Schedule)			
7. Loans to Stockholders			
8. Stock and Obligations of Subsidiaries	500	500	
9. Other Investments (Attach Schedule)	12,508,547	17,429,347	
10. Buildings and Other Fixed Depreciable Assets	400,177,454	402,386,207	
11. Accumulated Amortization and Depreciation	(50,346,698)	(60,930,458)	
12. Depletable Assets			
13. Accumulated Depletion	( )	( )	
14. Land	4,672,139	4,785,251	
15. Intangible Assets	2,125,361	1,392,651	
16. Accumulated Amortization	( )	( )	
17. Other Assets (Attach Schedule) #6	1,078,734	1,864,919	
18. Excessive Reserves or Undervalued Assets (Attach Schedule)			
19. Totals (Lines 1 through 18)	385,198,938	384,999,722	
LIABILITIES AND CAPITAL			
20. Accounts Payable	3,364,949	3,258,588	
21. Mortgages, Notes and Bonds Payable (One Year Old or Less at Balance Sheet Date and Having a Maturity of One Year or Less From Original Date Incurred)			
22. Other Current Liabilities (Attach Schedule)	107,219	51,636	
23. Loans From Stockholders			
24. Due to Subsidiaries and Affiliates			
25. Mortgages, Notes & Bonds Payable (More Than One Year Old at Balance Sheet Date or Having a Maturity of More Than One Year From Original Date Incurred)	332,750,000	328,750,000	328,750,000
26. Other Liabilities (Attach Schedule) #6	4,675,217	6,963,205	
27. Capital Stock: (A) Preferred Stock			
(B) Common Stock	36,000,000	36,000,000	36,000,000
28. Paid-in or Capital Surplus			
29. Surplus Reserves (Attach Schedule)			
30. Earned Surplus and Undivided Profits	8,301,553	9,976,293	9,976,293
31. Excessive Reserves or Undervalued Assets			
32. Totals—(Lines 20 through 31) (Enter Amount of Col. 3 on Line 6, Page 1)	385,198,938	384,999,722	374,726,293

TOTAL FRANCHISE TAXABLE BASE (EXTEND TOTAL AMOUNTS IN COLUMN 2 WHICH ARE INCLUDIBLE IN THE FRANCHISE TAXABLE BASE TO THIS COLUMN)

SCHEDULE B—Reconciliation of Income Per Books With Income Per Return

1. Net income per books	26,622,740	7. Income recorded on books this year not included in this return (Itemize) Schedule #5	2,704,642
2. Louisiana income tax	51,653		
3. Excess of capital losses over capital gains			
4. Taxable income not recorded on books this year (Itemize) Schedule #5	2,399,423	8. Deductions in this tax return not charged against book income this year (Itemize)	
5. Expenses recorded on books this year not deducted in this return (Itemize)		Schedule #5	11,912,541
Schedule #5	8,316,792	9. Total of Lines 7 and 8	14,617,183
6. Total of Lines 1 through 5	37,390,608	10. Income (Line 30, Page 3)—(Line 6 Less 9)	22,773,425

SCHEDULE C—Analysis of Earned Surplus and Undivided Profits Per Books (Line 30, Schedule A)

1. Balance at beginning of year	8,301,553	5. Distributions: (a) Cash	24,948,000
2. Net income per books	26,622,740	(b) Stock	
3. Other increases (Itemize)		(c) Property	
		6. Other decreases (Itemize)	
	34,924,293	7. Total of Lines 5 and 6	24,948,000

SCHEDULE D—Analysis of Amounts of Lines 21, 23 & 26, Column 2, Schedule A

1. ORIGINAL DATE OF INCEPTION	2. DATE DUE	3. PAYEE	4. INSTALLMENT AMOUNT	5. BALANCE DUE	6. TAXABLE AMOUNT*
TOTAL (*See Instructions)					

SCHEDULE E—Computation of Louisiana Taxable Income

(Do Not Complete If Schedule P of Form ICFT620A is Filed with this Return)

GROSS INCOME

1. Gross Receipts _____ Less: Returns and Allowances _____	
2. Less: Cost of Goods Sold and/or Cost of Operations (Schedule L)	
3. Gross Profit	
4. Dividends	
5. Interest	
6. Rents	
7. Royalties	
8. Net Gain From Sale of Capital Assets (Schedule F)	
9. Net Gain (Loss) From Sale of Property Other Than Capital Assets (Schedule G)	
10. Other Income (Attach Schedule)	
11. Total Income, Lines 3 Through 10	

DEDUCTIONS

12. Compensation of Officers (Schedule I)	
13. Salaries and Wages (Not Deducted Elsewhere)	
14. Repairs (Do Not Include Cost of Improvements or Capital Expenditures)	
15. Bad Debts (Attach Schedule)	
16. Rent	
17. Taxes (Attach Schedule)	
18. Interest	
19. Contributions or Gifts Paid (Attach Schedule) (See Instructions for Limitations)	
20. Losses by Fire, Storm, Shipwreck, or Other Casualty, or Theft (Attach Schedule)	
21. Amortization (Attach Schedule)	
22. Depreciation (Schedule H)	
23. Depletion (Attach Schedule)	
24. Advertising	
25. (A) Pension, Profit-Sharing, Stock Bonus, Annuity Plans (See Instructions)	
(B) Other Employee Benefit Plans (See Instructions)	
26. Dividends From Corporate Income Which Has Borne Louisiana Income Tax (Attach Schedule)	
27. Federal Income Tax (Schedule J)	
28. Other Deductions (Attach Schedule)	
29. Total Deductions, Lines 12 through 28	
30. Net Income—Line 11 Less Line 29—Enter on Line 1, Page 1	

NOTE: For Periods Beginning After December 31, 1968 the Corporate Exemption is No Longer Allowed.

SCHEDULE F—Gain or Loss From Sale of Capital Assets

1. DESCRIPTION OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. GROSS SALE PRICE	5. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR JAN. 1, 1934 (ATTACH SCHEDULE)	6. COST OR OTHER BASIS AND COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR JAN. 1, 1934	7. EXPENSE OF SALE	8. GAIN OR LOSS (COL. 4 PLUS COL. 5 LESS THE SUM OF COL. 6 & 7)
Land	1963-64	1969	11,552		9,292		2,260
TOTAL (Transfer Net Gain to Item 8 Sch. E)							2,260

SCHEDULE G—Gain or Loss From Sale of Property Other Than Capital Assets

TOTAL (Transfer Net Gain or Loss to Item 9 Sch. E)							

SCHEDULE H—Depreciation

1. KIND OF PROPERTY (IF BUILDINGS, STATE MATERIAL OF WHICH CONSTRUCTED; EXCLUDE LAND AND OTHER NONDEPRECIABLE PROPERTY. LIST ASSETS IN GROUPS BY DEPRECIATION METHOD.	2. DATE ACQUIRED	3. COST OR OTHER BASIS (EXCLUDE LAND)	4. DEPRECIATION ALLOWED (OR ALLOWABLE) IN PRIOR YEARS	5. METHOD OF COMPUTATION	6. RATE (%) OR LIFE (YEARS)	7. DEPRECIATION THIS YEAR
Furniture & Fixtures	Various	1,883,819	857,091	DB	10	203,372
Right of Way	Various	9,228,337	1,960,752	SL	22	419,031
Pipelines	Various	370,588,164	127,190,742	DB	22	22,025,236
Communication Equipment	Various	240,251	101,822	DB	10	24,822
Vehicles & other Work Equip.	Various	1,001,787	696,979	DB	7	113,822

1. Total	22,786,283
2. Less: Depreciation claimed in Cost of Goods Sold and Elsewhere on Return	
3. Balance—Enter Here And on Line 22, Schedule E	22,786,283

SCHEDULE I—Compensation of Officers

1. NAME & ADDRESS OF OFFICER NOTE: THE NAME AND ADDRESS OF THE PRESIDENT, VICE-PRESIDENT, SECRETARY, AND TREASURER MUST BE GIVEN EVEN THOUGH NO PAYMENTS WERE MADE TO THEM	2. OFFICIAL TITLE	3. TIME DEVOTED TO BUSINESS	% OF CORP STOCK OWNED 4. COM.	5. PREF.	6. AMOUNT OF COMPENSATION	7. EXPENSE ACCOUNT ALLOWANCES
		100%	None	None	Available on Audit	
TOTAL COMPENSATION OF OFFICERS (Enter Here and on Line 12, Schedule E)					289,794	

SCHEDULE J—Explanation of Federal Income Tax Deduction*

1. Total Net Income Reported for Federal Income Tax Purposes (See Instructions)	
2. Federal Income Tax Liability for Period for Which This Return is Filed (Net after investment credit of $_____)	
3. Less Portion, if Any, of Federal Income Tax Liability Attributable to Federal Net Income Not Taxable to Louisiana	
4. Balance (Line 2 Less Line 3)	
5. Deductible Deficiency Payments—Year to Which Applicable_____ Date Paid_____	
6. Total of Lines 4 and 5 (Enter as Item 27, Schedule E)	

SCHEDULE K—Reconciliation of Federal & Louisiana Net Income*

1. Total Net Income Reported on Federal Return	
2. Add: Deductions Claimed on Federal Return But Not on Louisiana Return or Income Reported on Louisiana Return But Not on Federal Return:	
(1) Louisiana Income Tax	
(2)	
(3)	
Deduct: Deductions Claimed on Louisiana Return But Not on Federal Return or Income Reported on Federal Return But Not on Louisiana Return:	
(1) Federal Income Tax	
(2)	
(3)	
3. Louisiana Net Income	

SCHEDULE L—Cost of Goods Sold

1. Inventory at Beginning of Year	
2. Merchandise Bought For Manufacture or Sale	
3. Salaries And Wages	
4. Other Costs Per Books (Attach Schedule)	
5. Total	
6. Less: Inventory at End of Year	
7. Cost of Goods Sold (Enter Here and on Line 2, Schedule E)	

A. Was inventory valued at—Cost ☐; lower of cost or market ☐ LIFO ☐; other ☐? If other, attach explanation.

B. Was the inventory verified by physical count during the year? Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined.

Schedule Annexed as per Note on Page #1

Page 1

STATE OF LOUISIANA—CORPORATION APPORTIONMENT AND ALLOCATION SCHEDULES

Name as Shown on ICF 1620
Colonial Pipeline Company

Income Tax Period Covered
January 1, 1969 thru December 31, 19

SCHEDULE M—Computation of Corporation Franchise Tax and Income Tax Property Ratios

1. Items	Located Everywhere		Located in Louisiana		
			Franchise Tax Property Factor	Income Tax Property Factor	
Intangible Assets	2. Beginning of Year	3. End of Year	4. End of Year	5. Beginning of Year	6. End of Year
1. Cash	1,017,388	1,564,293			
2. Notes and Accounts Receivable	12,995,308	13,890,549	2,156,536		
3. Reserve for Bad Debts	( )	( )	( )		
4. Investment in U.S. Govt. Obligations	970,205	2,616,463			
5. Stock and Obligations of Subsidiaries	500	500			
6. Other Investments (Attach Sch.)	12,508,547	17,429,347			
7. Loans to Stockholders					
8. Other Intangible Assets (Attach Sch.)	2,125,361	1,392,651			
9. Accumulated Depreciation	( )	( )	( )		
10. Total Intangible Assets (Lines 1—9)	29,617,309	36,893,803	2,156,536		
Real and Tangible Assets					
11. Inventories Materials & Supplies	399,859	535,792	66,071	47,738	66,071
12. Bldgs. and Other Depreciable Assets	400,177,454	402,386,207	40,013,994	40,050,074	40,013,994
13. Accumulated Depreciation	(50,346,698)	(60,930,458)	(6,119,677)	(5,080,874)	(6,119,677)
14. Depletable Assets					
15. Accumulated Depletion	( )	( )	( )	( )	( )
16. Land	4,672,139	4,785,251	179,050	172,666	179,050
17. Other Real & Tangible Assets (Att. Sch.) Work in Progress	678,875	1,329,127	98,537	69,210	98,537
18. Excessive Reserves, Undervalued Assets, or Assets Not Reflected on Bks.					
19. Total Real and Tangible Assets (Lines 11 Through 18)	355,581,629	348,105,919	34,237,975	35,258,814	34,237,975
20. Total Assets (Lines 10 and 19)	385,198,938	384,999,722	36,394,511		
21. Enter Amount From Line 19 Above	355,581,629	348,105,919		35,258,814	34,237,975
22. Less: Real and Tangible Assets Not Used in Production of Net Apportionable Income (Attach Schedule) V3.	1,131,854	1,772,120		69,210	98,537
23. Balance	354,449,775	346,333,799		35,189,604	34,139,438
24. Add Beginning of Year Balance		354,449,775			35,189,604
25. Total (Lines 23 and 24)		700,783,574			69,329,042
26. Franchise Tax Property Factor Ratio (Line 20, Col. 4 ÷ Line 20, Col. 3)			9.4531 %		
27. Income Tax Property Factor Ratio (Line 25, Col. 6 ÷ Line 25, Col. 5)					9.8931 %

SCHEDULE N—Computation of Corporation Franchise Tax Apportionment Percentage

1. Description of Items Used as Factors	2. Total Amount	3. Louisiana Amount	4. Per Cent (Col. 3 ÷ Col. 2)
1. Net Sales of Merchandise, Charges for Services and Other Revenues			
(A) Sales—See Instructions			
(B) Charges for services—See Instructions	100,912,206	15,666,822	
(C) Other Revenues: Itemize (See Instructions) (1) Rents and Royalties	6,060		
(2) Dividends and Interest From Subsidiaries			
(3) Other Dividends and Interest	1,489,925		
(4) Other	65,901		
Total—Enter Amounts in Columns 2 and 3 (Enter Ratio in Column 4)	102,474,092	15,666,822	15.2886 %
2. Franchise Tax Property Ratio (Enter in Column 4 Percent From Line 26, Schedule M)			9.4531 %
3. Total of Percents in Column 4			24.7417 %
4. Average of Percents (Line 3 divided by applicable number of factors) (Use in Apportioning total taxable base on Line 1, Schedule O)			12.3709 %

SCHEDULE O—Computation of Louisiana Corporation Franchise Taxable Base

1. Total Capital Stock, Surplus, Undivided Profits and Borrowed Capital (Sch. A, Ln. 32, Col. 3)	374,726,293	
2. Capital Stock, Surplus, Undivided Profits and Borrowed Capital Employed in Louisiana ($ 374,726,293 (Line 1) Multiplied by 12.3709 %) From Schedule N, Line 4, Column 4) (Enter on Line 6, Page 1)		46,357,015

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Page 2

SCHEDULE P—Computation of Louisiana Net Income

Complete Columns 2 and 3 if Separate Accounting Method is Used.

1. ITEMS	2. LA. AMOUNTS (LINES 1 THROUGH 29)	3. TOTALS
1. GROSS RECEIPTS 100,912,206 LESS RETURNS AND ALLOWANCES		100,912,206
2. LESS: COST OF GOODS SOLD (SCHEDULE L) AND/OR OPERATIONS (ATTACH SCHEDULE) #1		30,892,685
3. GROSS PROFIT		70,019,521
4. DIVIDENDS		
5. INTEREST		1,408,069
6. GROSS RENTS		6,060
7. GROSS ROYALTIES		
8. NET GAINS FROM SALE OF CAPITAL ASSETS (SCHEDULE F)		2,260
9. NET GAINS (LOSS) FROM SALE OF PROPERTY OTHER THAN CAPITAL ASSETS (SCHEDULE G)		
10. OTHER INCOME (ATTACH SCHEDULE) Incidental		63,641
11. TOTAL INCOME (LINES 3 THROUGH 10)		71,499,551
12. COMPENSATION OF OFFICERS (SCHEDULE I)		289,794
13. SALARIES AND WAGES (NOT DEDUCTED ELSEWHERE)		1,737,916
14. REPAIRS (DO NOT INCLUDE COST OF IMPROVEMENTS OR CAPITAL EXPENDITURES)		
15. BAD DEBTS (ATTACH SCHEDULE)		
16. RENTS		702,668
17. TAXES (ATTACH SCHEDULE) #1		5,138,988
18. INTEREST		16,970,574
19. CONTRIBUTIONS OR GIFTS PAID (ATTACH SCHEDULE) #2		5,282
20. LOSSES BY FIRE, STORM, SHIPWRECK, OR OTHER CASUALTY, OR THEFT (ATTACH SCH.) #1		52,214
21. AMORTIZATION (ATTACH SCHEDULE) #1		28,633
22. DEPRECIATION (SCHEDULE H)		22,786,283
23. DEPLETION (ATTACH SCHEDULE)		
24. ADVERTISING		
25. DIVIDENDS FROM CORPORATE INCOME WHICH HAS BORNE LOUISIANA INCOME TAX		
26. OTHER DEDUCTIONS (ATTACH SCHEDULE) #1		1,013,774
27. TOTAL DEDUCTIONS (LINES 12 THROUGH 26)		48,726,126
28. NET INCOME FROM LOUISIANA SOURCES (IF SEPARATE (DIRECT) METHOD OF REPORTING IS USED, ENTER HERE AND ON LINE 34)		
29. NET INCOME FROM ALL SOURCES		22,773,425
30. LESS: ALLOCABLE INCOME FROM ALL SOURCES (SEE INSTRUCTIONS) ATTACH SCHEDULE SUPPORTING EACH AMOUNT ENTERED ON LINES (A), (B) AND (C) BELOW AND LINES 33 (A), (B) and (C)		
(A) NET RENTS AND ROYALTIES #3	(4,491)	
(B) NET PROFIT FROM SALES OR EXCHANGES OF PROPERTY (INCLUDING SUCH ITEMS AS STOCKS, BONDS, LAND, MACHINERY, MINERAL RIGHTS) NOT MADE IN THE REGULAR COURSE OF BUSINESS	2,260	
(C) OTHER NET ALLOCABLE INCOME Schedule #7	645,307	643,076
31. BALANCE—NET INCOME SUBJECT TO APPORTIONMENT		22,130,349
32. NET INCOME APPORTIONED TO LOUISIANA (LINE 31 MULTIPLIED BY % FROM LINE 5, SCHEDULE Q)		2,168,287
33. ADD: ALLOCABLE INCOME FROM LOUISIANA SOURCES		
(A) NET RENTS AND ROYALTIES	400	
(B) NET PROFIT FROM SALES OR EXCHANGES OF PROPERTY (INCLUDING SUCH ITEMS AS STOCKS, BONDS, LAND, MACHINERY, MINERAL RIGHTS) NOT MADE IN THE REGULAR COURSE OF BUSINESS		
(C) OTHER NET ALLOCABLE INCOME		400
ADD: INCOME TAXES PAID, FEDERAL INCOME TAX DEDUCTION		2,168,687

P-16

STATE OF LOUISIANA

CORPORATION INCOME AND FRANCHISE TAX RETURN

INCOME TAX RETURN—1970 Or Other Taxable Year

For Calendar Year 1970, or

For Fiscal Year Beginning _____, 1970 and Ending _____, 1971

FRANCHISE TAX RETURN—1971 Or Other Taxable Year

Beginning _____, 1971 and Ending _____, 1972

FILED IN EVIDENCE

EXHIBIT P-16

DATE March 10, 1972

Josie M. Mayer
DEPUTY CLERK

FILE NO. _____

POSTED _____

1. BUSINESS CODE NUMBER: 4060

2. FEDERAL EMPLOYER IDENTIFICATION NUMBER: 58-0863362

3. LOUISIANA SALES TAX REGISTRATION NUMBER: _____

4. ENTER TOTAL SALES FROM LINE 1, SCHEDULE E OR COL. 3 LINE 1, SCHEDULE G: _____

Name: COLONIAL PIPELINE COMPANY

Number and Street: 3390 Peachtree Road, N.E.

City, Town and State: Atlanta, Georgia

ZIP Code: 30326

Please Answer Each Question Carefully

A. Date and State of Incorporation: Delaware - June 8, 1961

B. Principal Place of Business: Atlanta, Georgia

C. Principal kind of business (check only one)

- [ ] Air Transportation
- [X] Pipeline Transportation
- [ ] Other Transportation
- [ ] Service Enterprise
- [ ] Loan Business
- [ ] Manufacturing
- [ ] Merchandising and Other

D. Trade Name, if Different From Corporate Name: _____

E. Did The Internal Revenue Service, During The Current Year Examine Your Federal Income Tax Returns for Any Prior Years? Yes

If So, Please Indicate Years Examined and Amounts of any change in Tax Liability: No tax liability, if any, has been determined as yet 1962-1968

F. Parishes In Which Property Is Located: See Schedule #4

G. Did you at the end of the taxable year own directly or indirectly 50% or more of the voting stock of any corporation?
[X] Yes [ ] No

Did any corporation, individual, partnership, trust, or association at the end of the taxable year own directly or indirectly 50% or more of your voting stock?
[ ] Yes [X] No

If the answer to either question is "Yes," attach a schedule showing name, address and percentage owned. Schedule #6

H. Does This Corporation File as a "Small Business Corporation" for Federal Tax Purposes under IRC Subchapter "S"? No

I. Federal Taxable Income ..... $ 26,283,347

J. Federal Income Tax ..... $ 9,260,683

COMPUTATION OF LOUISIANA INCOME TAX

1	Taxable Net Income (Amount of Schedule E, Line 30 or Schedule P, Line 34, whichever is Applicable)	$ 2,154,763	
2	Amount of Tax (Line 1 Taxable at 4%)	$ 100,591	
3	LESS: Estimated Payment	(100,000)	
		30	
4	Interest (1%, Per Month From Due Date of Return to Date of Payment)		
5	Total Income Tax, Penalty and Interest (Lines 2, 3 and 4)		$ 621

COMPUTATION OF LOUISIANA CORPORATION FRANCHISE TAX

6	Taxable Capital Stock, Surplus, Undivided Profits and Borrowed Capital Schedule A, Line 33, Column 3 or Schedule O, Line 2, Whichever is Applicable)	$	COLONIAL PIPELINE COMPANY IS ENGAGED EXCLUSIVELY IN INTERSTATE COMMERCE AND IS THEREFOR NOT SUBJECT TO THE LOUISIANA FRANCHISE TAX.
7	Amount of Assessed Value of Real and Personal Property in Louisiana For 1970	$	
8	Corporation Franchise Tax Liability—(A) Line 6 or 7, Whichever is Greater, Multiplied By $1.50 For Each $1,000.00 or Major Fraction Thereof or (B) The Minimum Tax of $10.00. Enter Amount of (A) or (B), Whichever is Greater	$	
9	If Franchise Return is Delinquent (5% For Each 30 Days or Fraction Thereof Not to Exceed 25% of Line 8)		
10	Interest (1%, Per Month From Due Date of Return to Date of Payment)		
11	Total Franchise Tax, Penalty and Interest (Lines 8, 9 and 10)		
12	Total Amount Due (Line 5 Plus Line 11) Make Remittance Payable to: Collector of Revenue, State of Louisiana		$ 621

SIGNATURE AND VERIFICATION

I declare under the penalties for filing false reports that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all information relating to the matters required to be reported in the return of which he has knowledge.

A. E. Wooster — Vice President — 9/2/71
(SIGNATURE OF OFFICER) (TITLE) (DATE)

(STOCKHOLDER OR TAXPAYER) — 9/2/71 (DATE)

(INDIVIDUAL OR FIRM SIGNATURE OF PREPARER) (DATE) (ADDRESS)

SCHEDULE A—Balance Sheets and Franchise Taxable Data

ASSETS	1 BEGINNING OF YEAR	2 END OF YEAR	3 END OF YEAR
1 Cash	1,564,293	2,152,577	
2 Notes and Accounts Receivable	13,890,549	12,877,911	
3 Reserve for Bad Debts	( )	( )	
4 Inventories			
5 Investment in U.S. Government Obligations	2,616,463	-	
6 Other Current Assets (Attach Schedule)			
7 Loans to Stockholders			
8 Stock and Obligations of Subsidiaries	500	500	
9 Other Investments (Attach Schedule)	17,429,347	4,779,255	
10 Buildings and Other Fixed Depreciable Assets	402,386,207	405,729,151	
11 Accumulated Amortization and Depreciation	(60,930,458)	(71,791,749)	
12 Depletable Assets			
13 Accumulated Depletion	( )	( )	
14 Land	4,785,251	4,830,188	
15 Intangible Assets	1,392,651	1,687,710	
16 Accumulated Amortization	( )	( )	
17 Other Assets (Attach Schedule) Schedule #6	1,864,919	3,727,121	TOTAL FRANCHISE TAXABLE BASE (EXTEND TOTAL AMOUNTS IN COLUMN 2 WHICH ARE INCLUDIBLE IN THE FRANCHISE TAXABLE BASE TO THIS COLUMN)
18 Excessive Reserves or Undervalued Assets (Attach Schedule)			
19 Totals (Lines 1 through 18)	384,999,722	363,992,664	
LIABILITIES AND CAPITAL			
20 Accounts Payable	3,258,588	3,313,020	
21 Mortgages, Notes and Bonds Payable (One Year Old or Less at Balance Sheet Date and Having a Maturity of One Year or Less From Original Date Incurred)			See Note Page #1
22 Other Current Liabilities (Attach Schedule)	51,636	74,193	
23 Loans From Stockholders			
24 Due to Subsidiaries and Affiliates			
25 Mortgages, Notes & Bonds Payable (More Than One Year Old at Balance Sheet Date or Having a Maturity of More Than One Year From Original Date Incurred)	328,750,000	313,250,000	313,250,000
26 Other Liabilities (Attach Schedule) Schedule #6	6,963,205	8,804,222	2,988,000
27 Capital Stock: (A) Preferred Stock			
(B) Common Stock	36,000,000	36,000,000	36,000,000
28 Paid-in or Capital Surplus			
29 Surplus Reserves (Attach Schedule)			
30 Earned Surplus and Undivided Profits	9,976,293	2,553,229	2,553,229
31 Excessive Reserves or Undervalued Assets			
32 Totals—(Lines 20 through 31) (Enter Amount of Col. 3 on Line 6, Page 1)	384,999,722	363,992,664	354,791,229

SCHEDULE B—Reconciliation of Income Per Books With Income Per Return

1. Net income per books	27,072,856	7. Income recorded on books this year not included in this return (Itemize)	
2. Louisiana income tax	101,441	Schedule #5	2,650,192
3. Excess of capital losses over capital gains			
4. Taxable income not recorded on books this year (Itemize) Schedule #5	2,622,557	8. Deductions in this tax return not charged against book income this year (Itemize)	
		Schedule #5	10,383,236
5. Expenses recorded on books this year not deducted in this return (Itemize)			
Schedule #5	9,469,272	9. Total of Lines 7 and 8	13,033,428
6. Total of Lines 1 through 5	39,266,126	10. Income (Line 30, Page 3)—(Line 6 Less 9)	26,232,698

SCHEDULE C—Analysis of Earned Surplus and Undivided Profits Per Books (Line 30, Schedule A)

1. Balance at beginning of year	9,976,293	5. Distributions: (a) Cash	31,507,920
2. Net income per books	27,072,856	(b) Stock	
3. Other increases (Itemize)		(c) Property	
		6. Other decreases (Itemize) Dividends Payable	2,988,000
		7. Total of Lines 5 and 6	34,495,920
4. Total Lines 1, 2 and 3	37,049,149	8. Balance at end of year (Line 4 Less 7)	2,553,229

SCHEDULE F—Gain or Loss From Sale of Capital Assets

1. DESCRIPTION OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. GROSS SALE PRICE	5. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR JAN. 1, 1934 (ATTACH SCHEDULE)	6. COST OR OTHER BASIS AND COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR JAN. 1, 1934	7. EXPENSE OF SALE	8. GAIN OR LOSS (COL. 4 PLUS COL. 5 LESS THE SUM OF COL. 6 & 7)
Land	1963	1970	500		164		336
Land	1964	1970	16,709		12,267		4,442
TOTAL (Transfer Net Gain to Item 8 Sch. E)							4,778

SCHEDULE G—Gain or Loss From Sale of Property Other Than Capital Assets

TOTAL (Transfer Net Gain or Loss to Item 9 Sch. E)							

SCHEDULE H—Depreciation

1. KIND OF PROPERTY (IF BUILDINGS, STATE MATERIAL OF WHICH CONSTRUCTED) EXCLUDE LAND AND OTHER NONDEPRECIABLE PROPERTY. LIST ASSETS IN GROUPS BY DEPRECIATION METHOD.	2. DATE ACQUIRED	3. COST OR OTHER BASIS (EXCLUDE LAND)	4. DEPRECIATION ALLOWED (OR ALLOWABLE) IN PRIOR YEARS	5. METHOD OF COMPUTATION	6. RATE (%) OR LIFE (YEARS)	7. DEPRECIATION THIS YEAR
Furniture & Fixtures	various	1,944,126	1,030,058	DB	10	178,675
Right of Way	various	9,337,962	2,379,153	SL	22	419,647
Pipeline	various	373,650,548	148,190,851	DB	22	20,272,692
Communication Equipment	various	255,740	123,302	DB	10	24,622
Vehicles & Other Work Eqpt.	various	1,103,791	652,055	DB	7	110,042
1. Total						21,005,678
2. Less: Depreciation claimed in Cost of Goods Sold and Elsewhere on Return						
3. Balance—Enter Here And on Line 22, Schedule E						21,005,678

SCHEDULE I—Compensation of Officers

1. NAME & ADDRESS OF OFFICER NOTE: THE NAME AND ADDRESS OF THE PRESIDENT, VICE-PRESIDENT, SECRETARY, AND TREASURER MUST BE GIVEN EVEN THOUGH NO PAYMENTS WERE MADE TO THEM	2. OFFICIAL TITLE	3. TIME DEVOTED TO BUSINESS	% OF CORP. STOCK OWNED 4. COM.	% OF CORP. STOCK OWNED 5. PREF.	6. AMOUNT OF COMPENSATION	7. EXPENSE ACCOUNT ALLOWANCES
		100	None	None	302,854	
THIS INFORMATION WILL BE FURNISHED ON AUDIT.						
TOTAL COMPENSATION OF OFFICERS (Enter Here and on Line 12, Schedule E)					302,854	

SCHEDULE J—BAD DEBTS—RESERVE METHOD (See instruction 15)

1. YEAR	2. TRADE NOTES ACCOUNT RECEIVABLE OUTSTANDING AT END OF YEAR	3. SALES ON ACCOUNT	AMOUNT ADDED TO RESERVE 4. CURRENT YEAR'S PROVISION	AMOUNT ADDED TO RESERVE 5. RECOVERIES	6. AMOUNT CHARGED AGAINST RESERVE	7. RESERVE FOR BAD DEBTS AT END OF YEAR
1965						
1966						
1967						
1968						
1969						
1970						

SCHEDULE K—Reconciliation of Federal and Louisiana Net Income*

1. Total Net Income Reported on Federal Return	
2. Add: Deductions Claimed on Federal Return But Not on Louisiana Return or Income Reported on Louisiana Return But Not on Federal Return:	
(1) Louisiana Income Tax	
(2)	
(3)	
Deduct: Deductions Claimed on Louisiana Return But Not on Federal Return or Income Reported on Federal Return But Not on Louisiana Return:	
(1)	
(2)	
(3)	
* Income [illegible]	

* [illegible] of Form SCI 7470A is Filed with the Return.

SCHEDULE L—Cost of Goods Sold

1. Inventory at Beginning of Year	
2. Merchandise Bought For Manufacture or Sale	
3. Salaries And Wages	
4. Other Costs Per Books (Attach Schedule)	
5. Total	
6. Less: Inventory at End of Year	
7. Cost of Goods Sold (Enter Here and on Line 2, Schedule E)	

A. Was inventory valued at—Cost ☐; lower of cost or market ☐ LIFO ☐, other ☐? If other, attach explanation.

B. Was the inventory verified by physical count during the year? Yes ☐ No ☐. If "No," attach explanation of how the closing inventory was determined

STATE OF LOUISIANA CORPORATION APPORTIONMENT AND ALLOCATION SCHEDULE

COLONIAL PIPELINE COMPANY

January 1, 1970 through December 31, 1970

SCHEDULE M—Computation of Corporation Franchise Tax and Income Tax Property Ratios

1. ITEMS INTANGIBLE ASSETS	LOCATED EVERYWHERE		LOCATED IN LOUISIANA		
			FRANCHISE TAX PROPERTY FACTOR	INCOME TAX PROPERTY FACTOR	
	2. BEGINNING OF YEAR	3. END OF YEAR	4. END OF YEAR	5. BEGINNING OF YEAR	6. END OF YEAR
1 CASH	1,564,293	2,152,577			
2 NOTES AND ACCOUNTS RECEIVABLE	13,890,549	12,877,911	1,978,266		
3 RESERVE FOR BAD DEBTS	( )	( )	( )		
4 INVESTMENT IN U.S. GOVT. OBLIGATIONS	2,616,463				
5 STOCK AND OBLIGATIONS OF SUBSIDIARIES	500	500			
6 OTHER INVESTMENTS (Attach Sch.)	17,429,347	4,779,255			
7 LOANS TO STOCKHOLDERS					
8 OTHER INTANGIBLE ASSETS (Attach Sch.) #3	1,392,651	1,687,710			
9 ACCUMULATED DEPRECIATION	( )	( )	( )		
10 TOTAL INTANGIBLE ASSETS (Lines 1—9)	36,893,803	21,497,953	1,978,266		
REAL AND TANGIBLE ASSETS					
11 INVENTORIES Materials & Supplies	535,792	529,851	83,432	66,071	83,432
12 BLDGS. AND OTHER DEPRECIABLE ASSETS	402,386,207	405,729,151	40,318,410	40,013,994	40,318,410
13 ACCUMULATED DEPRECIATION	(60,930,458)	(71,791,749)	(7,218,293)	(6,119,677)	(7,218,293)
14 DEPLETABLE ASSETS					
15 ACCUMULATED DEPLETION	( )	( )	( )	( )	( )
16 LAND	4,785,251	4,830,188	179,050	179,050	179,050
17 OTHER REAL & TANGIBLE ASSETS (Att. Sch.) Construction Wk. in Progress	1,329,127	3,197,220	22,264	98,537	22,264
18 EXCESSIVE RESERVES, UNDERVALUED ASSETS OR ASSETS NOT REFLECTED ON BKS.					
19 TOTAL REAL AND TANGIBLE ASSETS (Lines 11 through 18)	348,105,919	342,494,711	33,384,863	34,237,975	33,384,863
20 TOTAL ASSETS (Lines 10 and 19)	384,999,722	363,992,664	35,363,129		
21 ENTER AMOUNT FROM LINE 19 ABOVE	348,105,919	342,494,711		34,237,975	33,384,863
22 IF REAL AND TANGIBLE ASSETS NOT USED IN PRODUCTION OF NET APPORTIONABLE INCOME (Attach Schedule)	1,772,120	3,623,215		98,537	22,264
23 BALANCE	346,333,799	338,871,496		34,139,438	33,362,599
24 ADD BEGINNING OF YEAR BALANCE		346,333,799			34,139,438
25 TOTAL (Lines 23 and 24)		685,205,295			67,502,037
26 FRANCHISE TAX PROPERTY FACTOR RATIO (Line 20, Col. 4 ÷ Line 20, Col. 3)			9.7153 %		
27 INCOME TAX PROPERTY FACTOR RATIO (Line 25, Col. 6 ÷ Line 25, Col. 3)					9.8513 %

SCHEDULE N—Computation of Corporation Franchise Tax Apportionment Percentage

1 DESCRIPTION OF ITEMS USED AS FACTORS	2. TOTAL AMOUNT	3. LOUISIANA AMOUNT	4 PER CENT (col. 3 ÷ col. 2)
1. Net Sales of Merchandise, Charges for Services and Other Revenues			
(A) Sales—See Instructions	SEE NOTE PAGE #1		
(B) Charges for services—See Instructions	102,998,646	15,822,343	
(C) Other Revenues: Itemize (See Instructions) (1) Rents and Royalties	6,707		
(2) Dividends and Interest From Subsidiaries			
(3) Other Dividends and Interest	1,236,706		
(4) Other	(2,295)		
Total—Enter Amounts in Columns 2 and 3 (Enter Ratio in Column 4)	104,239,764	15,822,343	15.1787 %
2. Franchise Tax Property Ratio (Enter in Column 4 Percent From Line 26, Schedule M)			9.7153 %
3. Total of Percents in Column 4			24.8940 %
4. Average of Percents (Line 3 divided by applicable number of factors) (Use in Apportioning total taxable base on Line 1, Schedule O)			12.4470 %

SCHEDULE O—Computation of Louisiana Corporation Franchise Taxable Base

1. Total Capital Stock, Surplus, Undivided Profits and Borrowed Capital (Sch. A, Ln. 32, Col. 3)	354,791,229	
2. Capital Stock, Surplus, Undivided Profits and Borrowed Capital Employed in Louisiana 354,791,229 (Line 1) Multiplied by 12.4470 % From Schedule N, Line 4 Column 4) Enter on Line 6, Page 1)	SEE NOTE PAGE #1	44,160,864

1. ITEMS	2. LA AMOUNTS	3. TOTALS
1 GROSS RECEIPTS LESS RETURNS AND ALLOWANCES #1		102,998,[illegible]
2 LESS COST OF GOODS SOLD (SCHEDULE L) AND/OR OPERATIONS (ATTACH SCHEDULE)		30,744,[illegible]
3 GROSS PROFIT		72,254,137
4 DIVIDENDS		1,077,890
5 INTEREST		6,707
6 GROSS RENTS		
7 GROSS ROYALTIES		
8 NET GAINS FROM SALE OF CAPITAL ASSETS (SCHEDULE F)		4,778
9 NET GAINS (LOSS) FROM SALE OF PROPERTY OTHER THAN CAPITAL ASSETS (SCHEDULE G)		
10 OTHER INCOME (ATTACH SCHEDULE) (Misc. Income)		(7,073)
11. TOTAL INCOME (LINES 3 THROUGH 10)		73,336,439
12. COMPENSATION OF OFFICERS (SCHEDULE I)		302,854
13. SALARIES AND WAGES (NOT DEDUCTED ELSEWHERE)		1,706,703
14. REPAIRS (DO NOT INCLUDE COST OF IMPROVEMENTS OR CAPITAL EXPENDITURES)		
15. BAD DEBTS (ATTACH SCHEDULE)		703,217
16. RENTS		5,708,775
17. TAXES (ATTACH SCHEDULE) Schedule #1		16,474,337
18. INTEREST		13,130
19. CONTRIBUTIONS OR GIFTS PAID (ATTACH SCHEDULE) Schedule #2		
20. LOSSES BY FIRE, STORM, SHIPWRECK, OR OTHER CASUALTY, OR THEFT (ATTACH SCH.)		44,000
21. AMORTIZATION (ATTACH SCHEDULE) Schedule #1		21,005,678
22. DEPRECIATION (SCHEDULE H)		
23. DEPLETION (ATTACH SCHEDULE)		
24. ADVERTISING		
25. DIVIDENDS FROM CORPORATE INCOME WHICH HAS BORNE LOUISIANA INCOME TAX Schedule #1		1,145,042
26. OTHER DEDUCTIONS (ATTACH SCHEDULE)		47,103,741
27. TOTAL DEDUCTIONS (LINES 12 THROUGH 26)		
28. NET INCOME FROM LOUISIANA SOURCES (IF SEPARATE (DIRECT) METHOD OF REPORTING IS USED, ENTER HERE AND ON LINE 34)		26,232,698
29. NET INCOME FROM ALL SOURCES		
30. LESS: ALLOCABLE INCOME FROM ALL SOURCES (SEE INSTRUCTIONS) ATTACH SCHEDULE SUPPORTING EACH AMOUNT ENTERED ON LINES (A), (B) AND (C) BELOW AND LINES 33 (A), (B) and (C)		
(A) NET RENTS AND ROYALTIES Schedule #1	(2,939)	
(B) NET PROFIT FROM SALES OR EXCHANGES OF PROPERTY (INCLUDING SUCH ITEMS AS STOCKS, BONDS, LAND, MACHINERY, MINERAL RIGHTS) NOT MADE IN THE REGULAR COURSE OF BUSINESS	4,778	
(C) OTHER NET ALLOCABLE INCOME	410,077	411,916
31. BALANCE—NET INCOME SUBJECT TO APPORTIONMENT		25,820,782
32. NET INCOME APPORTIONED TO LOUISIANA (LINE 31 MULTIPLIED BY % FROM LINE 5, SCHEDULE Q)		2,514,763
33. ADD: ALLOCABLE INCOME FROM LOUISIANA SOURCES		
(A) NET RENTS AND ROYALTIES		
(B) NET PROFIT FROM SALES OR EXCHANGES OF PROPERTY (INCLUDING SUCH ITEMS AS STOCKS, BONDS, LAND, MACHINERY, MINERAL RIGHTS) NOT MADE IN THE REGULAR COURSE OF BUSINESS		
(C) OTHER NET ALLOCABLE INCOME		
34. TOTAL NET INCOME SUBJECT TO TAX (ENTER AS ITEM 1 PAGE 1 OF FORM IOFT 620)		2,514,763

NOTE: FOR TAXABLE PERIODS BEGINNING ON OR AFTER JANUARY 1, 1970, FEDERAL INCOME TAX IS NOT DEDUCTIBLE.

SCHEDULE Q—Computation of Income Tax Apportionment Percentage

1. DESCRIPTION OF ITEMS USED AS FACTORS (Your Principal Kind of Business Determines Which Factors Apply) (See Instructions).	2. TOTAL AMOUNT	3. LOUISIANA AMOUNT	4. PER CENT (COL. 3 ÷ COL. 2)
1. NET SALES OF MERCHANDISE AND/OR CHARGES FOR SERVICES:			
(A) Sales—See Inst.			
(B) Charges for services—See Inst.			
(C) BARREL MILES	482,804,897,979	74,166,898,920	15.3617 %
TOTAL (Enter total of Lines (A), (B), and (C) in Col. 2 & 3) (Enter ratio in Col. 4)			
2. WAGES, SALARIES, AND OTHER PERSONAL SERVICE COMPENSATION PAID DURING THE YEAR (Enter amounts in Col. 2 and 3, and ratio in Col. 4)	6,549,553	265,845	4.0589 %
3 INCOME TAX PROPERTY RATIO. (Enter percentage from line 27, Sch. M)			9.6513 %
4 TOTAL OF PERCENTS IN COLUMN 4			9.7719 %
5 AVERAGE OF PERCENTS (Line 4 divided by number of factors used) (Use result in determining income apportioned to Louisiana on Line 32, Schedule P)			

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #1

Cost of Operations - Schedule P, Line 2

Operating Fuel and Power	$ 18,864,956
Salaries and Wages	4,413,933
Outside Services	2,323,648
Product Losses and Shortages	2,925,523
Supplies and Expense	1,491,365
Maintenance Materials	725,084
	$ 30,744,509

Taxes - Schedule P, Line 17

Ad Valorem	$ 4,321,812
State Income (Ex. La.)	950,002
FICA	210,778
State Franchise	206,195
Federal Unemployment	8,896
State Unemployment	10,613
Other	479
	$ 5,708,775

Amortization - Schedule P, Line 21

Description	Year Incurred	Amount	Prior Years Deduction	Amortization Period	Amortizati For Year
Finance Costs	1962-1969	$582,839	$ 184,010	Thru 2002	$44,000

Other Deductions - Schedule P, Line 26

Employee Benefits	$ 833,213
Insurance	281,406
Miscellaneous	30,423
	$ 1,145,042

58-0863362

COLONIAL PIPELINE COMPANY

CONTRIBUTIONS PAID IN 1970

SCHEDULE #2

NAME OF ORGANIZATION	STATE	AMOUNT
Americus Fire Dept.	Ga.	$ 30.00
Apex Volunteer Fire Dept.	N.C.	25.00
Athens-Clarke Community Chest	Ga.	25.00
Bel Air Volunteer Fire Co.	Md.	6.00
Boys Club of America	N.Y.	250.00
Brookhaven Christian Church	Ga.	183.00
Calcasieu United Appeal	La.	25.00
Coaling Comm. Little League	Ala.	100.00
City of Belton	S.C.	7,109.00
Central Alarmers	Md.	100.00
Emery University	Ga.	50.00
Fairfax Volunteer Fire Dept.	Va.	25.00
Fellowship Fire Co.	N.J.	25.00
First Methodist Church	Ga.	25.00
Ga. Found. of Independent Colleges	Ga.	500.00
Georgia Baptist Hospital	Ga.	100.00
Georgia Peach Officers Assoc.	Ga.	25.00
Hixson Pike Fire Dept. Inc.	Tenn.	35.00
Jacksonville Volunteer Fire Dept.	N.C.	200.00
Jarrettsville Volunteer Fire Co.	Md.	100.00
Jean Hunter Ikard Memorial Fd.	Tex.	25.00
Jr. Achievement of Greater Atlanta	Ga.	200.00
Manchester Volunteer Rescue Sq.	Va.	25.00
Maryland Law Enforcement	Md.	25.00
Metrol Atlanta-American Red Cross	Ga.	100.00
Miss. Found. of Independent College	Miss.	150.00
Mutual Aid Organization	Va.	15.00
N.C. Found. Church - Rel. Colleges	N.C.	150.00
NAACP Special Contribution Fd.	N.Y.	50.00
Oak Grove Methodist Church	Ga.	236.00
Pasadena Volunteer Fire Dept.	Tex.	50.00
Penn. Chiefs of Police Assoc.	Penn.	25.00
Port Reading First Aid Squad	N.J.	25.00
Port Reading Volunteer Fire Dept.	N.J.	25.00
Post Volunteer Fire Dept.	Tenn.	17.00
Sabino-Neches Chiefs Assoc.	Tex.	25.00
Salvation Army	Ga.	50.00
So. Jersey Police Association	N.J.	25.00
St. Pious The Tenth School	Ga.	104.00

ributions Paid in 1970 (cont'd) Page 2

Sykesville Volunteer Fire Dept.	Md.	$ 25.00
Thorofare Volunteer Fire Dept.	N.J.	25.00
Underwood-Memorial Hospital	N.J.	100.00
United Appeal	Ga.	1,600.00
United Appeals	Tex.	25.00
United Community Campaign	N.C.	25.00
United Community Ser. of Cen. N.J.	N.J.	75.00
United Fund Campaign	N.C.	75.00
United Fund of Anderson County	S.C.	25.00
United Fund of Cent. Maryland	Md.	25.00
United Fund of Gloucester City	N.J.	75.00
United Fund of Roanoke Valley	Va.	25.00
United Fund of Spartanburg	S.C.	25.00
United Fund Rome & Floyd City	Ga.	25.00
United Givers Fund	Ga.	25.00
United Givers Fund of Richmond	Va.	175.00
United Givers Fund	D.C.	25.00
United Negro College Fund	Ga.	300.00
Va. Found. of Independent Colleges	Va.	150.00
Volunteer Fire Dept. - Montvale	Va.	25.00
American Cancer Society	Ga.	20.00
TOTAL CONTRIBUTIONS		$13,130.00

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #3

Net Rents - Schedule P, Line 30a

	Rent Received	Depreciation	Insurance	Net Rent
Land - Virginia	$ 1	-	-	$ 1
House - Alabama	825	$ 1,072	$ 79	(326)
House - Maryland	3,385	2,673	115	597
Delivery Lines - Tennessee	1,739	5,707	-	(3,968)
Land - New Jersey	60	-	-	60
Land - South Carolina	635	-	-	635
Land - North Carolina	50	-	-	50
Land - Tennessee	12	-	-	12
	$ 6,707	$ 9,452	$ 194	($ 2,939)

Other Intangible Assets - Schedule M, Line 8

	12-31-69	12-31-70
Special Deposits	$ 5,705	$ 5,705
Interest Receivable	167,049	1,714
Other Current Assets	32,069	22,657
Prepaid Insurance and Rent	198,347	109,590
Cost of Financing	449,216	405,227
Other Deferred Charges	83,627	651,626
Cost of Organization	38,629	38,629
Contract Pending Proper Classification	215,331	215,331
Employee Group Insurance Reserve	112,678	147,231
Treasury of the United States	90,000	90,000
	$ 1,392,651	$ 1,687,710

Real & Tangible Assets Not Used in Production of Apportionable Income - Schedule M, Line 22

	Louisiana		Everywhere	
	12-31-69	12-31-70	12-31-69	12-31-70
Construction Work in Progress	$ 98,537	$ 22,264	$1,329,127	$3,197,270
Rental Property (net)	0	0	448,993	425,945
	$ 98,537	$ 22,264	$1,778,120	$3,623,215

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #4

Page 1, Question F

Parishes in Which Property is Located:

Acadia
East Baton Rouge
Calcasieu
Cameron
E. Feliciana
W. Feliciana
Jefferson Davis
Pointe Coupee
St. Helena
St. Landry

Not doing intrastate business in Louisiana. All of Colonial's facilities and personnel are used soley in furtherance of the company's interstate business.

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #5

Taxable Income Not Recorded on Books This Year - Page 2, Schedule B of This Return

1969 Revenue Accrual	$ 2,573,000
1969 Interest Receivable U.S. Treasury Bills	49,557
	$ 2,622,557

Expenses Recorded on Books This Year Not Deducted in This Return - Page 2, Schedule B of This Return

Incentive Compensation	$ 113,400
Book Accrual of Interest on Deferred Incentive Compensation	3,559
Federal Income Taxes	9,352,313
	$ 9,469,272

Income Recorded on Books This Year Not Included in This Return - Page 2, Schedule B of This Return

Interest Received - U.S. Treasury Bills	$ 158,991
1970 Revenue Accrual	2,491,000
Overhead on Sale of Land	201
	$ 2,650,192

Deductions in This Return Not Charged Against Book Income This Year - Page 2, Schedule B of This Return

Interest Charged to Construction	$ 149,289
Depreciation in Excess of Book Depreciation	9,967,832
Incentive Compensation	112,813
Contested Taxes	153,302
	$ 10,383,236

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #6

Page 2, Line 17, Schedule A - Other Assets

	12/31/69	12/31/70
Matherials & Supplies	$ 535,792	$ 529,851
Construction Work in Progress	1,329,127	3,197,270
	$ 1,864,919	$ 3,727,121

Page 2, Line 26, Schedule A - Other Liabilities

	12/31/69	12/31/70
Salaries & Wages	$ 469,657	$ 506,360
Interest Payable	1,392,192	1,334,067
Taxes Payable	4,762,159	3,751,431
Employee Group Insurance Reserve	112,678	147,231
Incentive Compensation	72,445	76,592
Contested Taxes	153,302	-
Other	772	541
Dividend Payable	-	2,988,000
	$ 6,963,205	$ 8,804,222

Question G, Page 1 of the Return

Name: Colonial Pipeline Company of Pennsylvania

Address: 3390 Peachtree Road, N.E., Atlanta, Georgia 30326

Employer Identification Number: 5810940016

Percentage Owned: 100%

COLONIAL PIPELINE COMPANY

1970 LOUISIANA INCOME TAX RETURN

SCHEDULE #7

Other Net Allocable Income - Schedule P, Line 30c

	Allocable Investments 1/1/70	Allocable Investments 12/31/70	Total Assets 1/1/70	Total Assets 12/31/7
U.S. Treasury Bills, Finance Notes, Cert. of Deposit	$ 20,045,810	$ 4,779,255	$ 20,045,810	$ 4,779,25
Rental Property Net	465,969	425,945	465,969	425,94
Other Assets			364,487,943	358,787,4
	$ 20,511,779	$ 5,205,200	$ 384,999,722	$ 363,992,6
Beginning of Year Balance		$ 20,511,779		$ 384,999,7
Total		$ 25,716,979		$ 748,992,3
Average		$ 12,858,490		$ 374,496,1
Ratio				.034335

Interest Expense Allocated to Total Allocable Assets (.034335 x 16,474,337) $ 565,4

Interest Expense Allocated to U.S. Treasury Bills
Average Investment U.S. Treasury Bills * 1,308,231 / 12,858,490 x 565,466 $ 57,3

Interest Income U.S. Treasury Bills 158,9
Interest Expense Allocated U.S. Treasury Bills 158,9

Other Allocable Income

Interest Income		1,077,8
Less: Interest Expense Attributable to Other Allocable Income 565,466 - 57,355	508,111	
Overhead	711	
Interest Expense Attributable to U.S. Treasury Bills	158,991	667,81
Other Net Allocable Income		$ 410,07

* 1-1-70 $ 2,616,463
12-31-70 -0-
Total 2,616,463
Average $ 1,308,231

COLONIAL PIPELINE COMPANY	:	No. 152,892 - DIVISION B
VERSUS	:	19TH JUDICIAL DISTRICT COURT
E. LEE AGERTON, COLLECTOR OF REVENUE	:	PARISH OF EAST BATON ROUGE
	:	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

This action arose from a dispute between the plaintiff, Colonial Pipeline Company and the defendant, the Collector of Revenue for the State of Louisiana, concerning the tax liability of the plaintiff under L.S.A. - R.S. 47:601, the Louisiana Corporation Franchise Tax, for the years 1970-71. Under the procedure of the tax statutes, the plaintiff was assessed for those years, paid the tax under protest, and is here seeking recovery of the taxes paid plus interest. At trial, the parties introduced no testimonial evidence, but submitted the case for decision on stipulations and documentary evidence. From that evidence and those stipulations arise the following findings of fact.

Colonial Pipeline Company is a common carrier of liquefied petroleum products, subject to the regulations of the Interstate Commerce Commission. Its chief physical asset is a massive pipeline system stretching from the area of Houston, Texas to the outskirts of New York City, a total of some 3,400 miles of pipe. Through this line, Colonial pumps approximately one million gallons of petroleum products per day, none

of which it owns. Of the total pipeline mileage owned by Colonial, approximately 258 are located in the State of Louisiana. Over this distance, there are several booster pumping stations which keep the products flowing at a sustained rate, and at various collection points (chiefly Lake Charles and Baton Rouge), there are tank storage facilities. To maintain and help operate this line, Colonial keeps approximately 25-30 employees in the State. These consist of various classifications of mechanics, electricians, and other workers whose chief duties are to inspect the line and perform minor maintenance chores. There were no administrative offices or personnel in the State during the period in contention, although prior to this time Colonial had maintained a Division office in Baton Rouge.

In its operation in Louisiana, Colonial has apparently done no intrastate shipping of petroleum products. Loads or batches are picked up outside the state and deposited within the state, and picked up within the state for transportation elsewhere. There are apparently no facilities in the state, except for those in Lake Charles and Baton Rouge, for injecting or withdrawing products into or from the line.

In 1970, the Legislature amended and reenacted R.S. 47:601, after Colonial and successfully overturned an attempted application of a similar tax in 1968. Colonial Pipeline v. Mouton 228 So. 2d 718. The questions posed in the first Colonial case are again at bar in the instant action: How should Colonial's activities in the State of Louisiana be characterized vis' a vis' interstate commerce? Does the statute, as written, apply to Colonial? If so, is the application

constitutional in light of Article I, Section 8, Clause 3 of the United States Constitution?

In the first Colonial case, the appellate court answered these questions in this manner: It upheld the trial courts' finding that all of Colonial's activities in the state were closely connected with and incidental to its transportation of petroleum products in interstate commerce, it found the statute, as then written, applicable to Colonial but it further found, and again upheld the trial court, that such application was violative of the Commerce Clause as a tax upon the privilege to engage in interstate commerce and thus voided the application of the tax to Colonial.

In the instant action, it seems apparent that Colonial's activities in Louisiana, as earlier documented, have not changed appreciably, if at all, in the intervening time period. In fact, counsel for both plaintiff and defendant stipulated to the essentially unchanged operations of Colonial in Louisiana. Without contrary evidence, and in light of this stipulation, this Court can see no reason to alter the characterization of Colonial's activities in Louisiana as wholly interstate in nature as was done in the first Colonial case.

Since this Court has found that Colonial's Louisiana operation as wholly interstate in character, only two questions remain for decision. The first, that of the applicability of the tax to Colonial, can be disposed of quickly, since it seems obvious that Colonial's activities are such that it cannot escape application of the tax. Under the three incidents listed, Colonial is subject to the tax on the basis of all three. It is

qualified to do business in Louisiana, it is doing business here, and it owns and is using part of its property here, all in corporate form. However, in the first Colonial case, First Circuit Court of Appeals stated that these incidents are not a sufficient basis to support a valid application of this tax. As they stated at page 722:

> "This question has never been squarely presented to an appellate court of this state, to our knowledge, on any prior occasion. However, we are of the opinion that these privileges are not of a sufficient local nature as to subject Colonial to a franchise tax. The privileges above enunciated are incidental to and in the furtherance of Colonial's primary object of transporting petroleum products in interstate commerce. The mere qualification to do business does not, per se, subject Colonial to the subject tax.' Colonial Pipeline v. Mouton 228 So. 2d 718."

The remaining question at bar is simply this: Is the application of the franchise tax to Colonial constutitionally valid considering both the interstate nature of its business operations here, and the Commerce Clause of the United States Constitution?

In the first Colonial case, the First Circuit Court of Appeals stated that under the statute (as then written) the tax sought to be imposed could validly apply to a foreign corporation engaged in interstate commerce only where the tax was in lieu of other corporate taxes or where sufficient local activities existed to justify imposition of the tax. The 1970 statute, like

the previous one, specifically states that the tax is to be imposed in addition to other corporate taxes and thus cannot be an "in lieu" tax. Furthermore, since no local activities can be found in Colonial's operations here, the tax cannot be applied on this basis. The only remaining possibility is that the 1970 amendment sufficiently changed the statute to cure the constitutional defects barring application to Colonial.

The 1970 amendment to R.S. 47:601 made two changes in the previous statute. The first change eliminated one of the taxable incidents of the previous statute: the privilege of carrying on or doing business in Louisiana. The second change merely separated the other taxable incidents and placed them in individual paragraphs, adding a section explaining the purpose of the statute. In the place of the eliminated incident, the 1970 statute calls for the tax to apply if the corporation qualifies to carry on or do business or actually does business in corporate form. The aforementioned changes in R.S. 47:601 do not appear to be substantial. Despite the removal of the "privilege to do business" incident, and the addition of the "corporate form" incident, an honest appraisal must be that there is little or no difference between the two. To operate in corporation form, or any other form, in interstate commerce is to exercise the privilege of doing business in any state which that commerce may contact, and use of "magic" words or phrases cannot change this fact. If a tax on the privilege of doing business is to be prohibited by the Commerce Clause, then a tax on the actual doing business must also be prohibited.

Therefore, considering the stipulations,

exhibits and the above and foregoing reasons, it is the judgment of this Court that to apply the tax called for in R.S. 47:601 to this plaintiff would be an unconstitutional exercise of the taxing power of the State of Louisiana.

Judgment will be rendered in favor of the plaintiff, Colonial Pipeline Company, and against the defendant Collector of Revenue in the amount of the main demand. Judgment will be signed accordingly, with costs to be paid by the defendant to the extent permitted by law.

Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 17th day of May, 1972.

s/Daniel W. LeBlanc
Daniel W. LeBlanc, Judge

...oOo...

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION "H"

COLONIAL PIPELINE COMPANY	:	NUMBER 152,892
	:	
VS.	:	Filed May 26, 1972
	:	
E. LEE AGERTON,	:	
COLLECTOR OF REVENUE	:	JUDGMENT

This cause came on for hearing on the 10th day of March, 1972, according to previous assignment. Present in court: R. Gordon Kean, Jr. of Sanders, Miller, Downing & Kean, Attorneys for Plaintiff, Colonial Pipeline Company; Donald C. Theriot and A. Lynn Wright, Attorneys

for Defendant, Collector of Revenue.

This cause having been duly heard and submitted to the Court for adjudication, pursuant to briefs to be filed, and the Court considering the law and evidence to be in favor of Plaintiff, for written reasons assigned on the 17th day of May, 1972;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the Plaintiff, Colonial Pipeline Company, and against the Defendant, Collector of Revenue, in the sum of One Hundred Fifty Thousand, Seven Hundred Nineteen and 80/100 ($150,719.80) Dollars, representing the amount paid by Colonial Pipeline Company to the Collector of Revenue under protest as set forth in the petition herein, together with interest on said amount at the rate of two (2%) per cent per annum from November 2, 1971, until paid, and for all costs which may be legally assessed against the Collector of Revenue.

JUDGMENT RENDERED in Open Court on the 17th day of May, 1972.

JUDGMENT READ AND SIGNED in Open Court this 26th day of May, 1972, at Baton Rouge, Louisiana.

s/Daniel W. LeBlanc
J U D G E

...oOo...

Supreme Court, U. S.
FILED
MAY 23 1974
MICHAEL RODAK, JR., CLERK

No. 73-1595

In the Supreme Court of the United States

OCTOBER TERM, 1973

COLONIAL PIPELINE COMPANY,
Appellant,

v.

E. LEE AGERTON, COLLECTOR OF REVENUE,
Appellee.

On Appeal from the Supreme Court of the State of Louisiana

MOTION TO DISMISS ON BEHALF OF THE COLLECTOR OF REVENUE

CHAPMAN L. SANFORD and
WHIT C. COOK, II
Department of Revenue,
Legal Division,
Post Office Box 201,
Baton Rouge, Louisiana 70821.
Attorneys for Appellee.

No. 73-1595

In the Supreme Court of the United States

OCTOBER TERM, 1973

COLONIAL PIPELINE COMPANY,

Appellant,

v.

E. LEE AGERTON, COLLECTOR OF REVENUE,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana

MOTION TO DISMISS ON BEHALF OF THE COLLECTOR OF REVENUE

Appellee, through undersigned counsel of record, respectfully moves that this appeal be dismissed on the following grounds:

No substantial federal question is raised by the facts of this case. The corporation franchise levied by the Louisiana Legislature is imposed upon the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant, or other property in Louisiana, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the state. This court has held such local incidents to be subject to the constitutional exercise of the state taxing power without violating the Commerce Clause limitation of the Federal Constitution.

STATEMENT OF THE CASE

This suit arose from a dispute between the Collector of Revenue, (hereinafter called Collector) and Colonial Pipeline Company, (hereinafter called Colonial) concerning Colonial's 1970 and 1971 tax liability for the Louisiana Corporation Franchise Tax imposed by La. Rev. Stat. 47:601, as amended by Act 325 of 1970. Pursuant to La. Rev. Stat. 47:1576 Colonial seeks refund of the taxes paid under protest.

Colonial, a foreign corporation, which voluntarily qualified to do business in Louisiana, owns and operates a petroleum pipeline system extending from Houston, Texas, through Louisiana to the New York City area. Of the total pipeline mileage owned by Colonial, approximately 258 miles are located in Louisiana.

In addition, Colonial owns and operates pumping stations, tank farms and related facilities which are used to facilitate the interstate shipment of petroleum products through the pipeline. Colonial does not engage in any intrastate shipment of petroleum products in Louisiana; however, to maintain and operate the line and facilities, Colonial does employ approximately 25 to 30 persons in this state.

The Collector contends that Colonial is liable for the Louisiana Corporation Franchise Tax and that the imposition of this tax upon Colonial is constitutionally permissible under the Commerce Clause, Article 1, Section 8, Clause 3, of the United States Constitution. Colonial, however, protests this imposition of the tax on the grounds that La. Rev. Stat. 47:601 as amended by Act 325 of 1970, was not intended by the Louisiana Legislature to impose a franchise tax on a corporation engaging exclusively in interstate commerce, and that if La. Rev. Stat. 47:601 does levy such a tax, then it violates the Commerce Clause of the United States Constitution, the due process clause of the Fourteenth Amendment of said Constitution and Article 1, Section 2 of the Louisiana Constitution.

The trial court held that the statute in question imposes a tax upon the privilege of doing business in the state and that since Colonial was a foreign corporation doing only interstate business in Louisiana, to impose the tax upon Colonial would be to exact a tax for the privilege of doing interstate business, which application would violate the Commerce Clause. The court of appeals affirmed the district court's decision.

The Louisiana Supreme Court reversed, holding the application of the tax to be a constitutional exercise of the State of Louisiana's taxing power not unconstitutional under the Commerce Clause of the Federal Constitution and this appeal was taken.

ARGUMENT

The issue in this case is the constitutionality of the imposition of the Louisiana Corporation Franchise Tax imposed by La. Rev. Stat. 47:601, as amended by Act 325 of 1970, upon Colonial, in light of the Commerce Clause of the Federal Constitution.

La. Rev. Stat. 47:601 provides:

"§ 601. Imposition of tax

"Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in

this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

"(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term 'doing business' as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

"(2) The exercising of a corporation's charter or the continuance of its charter within this state.

"(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

"It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers,

rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

"As used herein the term 'domestic corporation' shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term 'foreign corporation' shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any other state, territory or district, or foreign country."

Amended by Acts 1970, No. 325, § 1, emerg. eff. July 13, 1970 at 2:15 P.M.

The appellant argues in this case that the above franchise tax is imposed solely upon the privilege of doing interstate business as applied to appellant. However, the Louisiana Supreme Court at 289 So. 2d. 93, 96-101, construed the statute in the following manner:

"The statute as amended in 1970 imposes a corporation franchise tax upon, pertinently, every foreign corporation (and every domestic corporation as well) exercising its charter, authorized to do or doing business, or owning or using any part or all of its capital or plant, in the State of Louisiana. The tax is due and payable on any one or all of three alternative incidents:

"a) doing business in Louisiana in a corporate form

"b) the exercising of a corporation's charter or the continuance of its charter within the state and

"c) the owning or using any part or all of its capital, plant or other property in Louisiana in a corporate capacity.

"The thrust of the statute is to tax not the interstate business done in Louisiana by a foreign corporation, but the doing of business in Louisiana in a corporate form, including

> 'each and every act, power, right, privilege or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations . . .'

* * * *

"Louisiana's corporation franchise tax statute, as amended by Act 325 of 1970, and as applied to foreign corporations doing only interstate business in Louisiana, taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this state, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the State.

"The corporation, including the foreign corporation doing only interstate business in Louisiana, enjoys under our laws many privileges separate and apart from simply doing business, such for instance as the legal status to sue and be sued in the Courts of our State, continuity of business without interruption by death or dissolution, transfer of property interests by the disposition of shares of stock, advantages of business controlled and managed by corporate directors, and the general absence of individual liability, among others.

"That the corporation enjoys power and privileges not possessed by individuals or partnerships was long ago recognized by this Court. Conway v. Lane Cotton Mills Co., 178 La. 626, 152 So. 312 (1933).

"The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing interstate business in the State, does not in our view detract from the fact that the local incident taxed is the form of doing business rather than the business done by that corporation. And it is our view that the local incident is real and sufficiently distinguishable, so that taxation thereof does not, under the controlling decisions of the United States Supreme Court, violate the Commerce Clause.

"The Statute does not discriminate between foreign and local corporations, being applicable, as it is, to both. Nor do we believe that the State's exercise of its power by this taxing statute is out of proportion to Colonial's activities within the state and their consequent enjoyment of the opportunities and protection which the state has afforded them.

"Furthermore we believe that the State has given something for which it can ask return. The return, tax levy in this case, is an exaction which the State of Louisiana requires as a recompense for its protection of lawful activities carried on in this state by Colonial, activities which are incidental to the powers and privileges possessed

by it by the nature of its organization, here, as in *Memphis Natural Gas*, the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of their pipeline system throughout the 258 miles of its pipeline in the State of Louisiana.

"We therefore find R.S. 47:601 et seq. to be a Constitutional exercise of the State of Louisiana's taxing power not unconstitutional under the Commerce Clause of the Federal Constitution."

Thus, the Louisiana Supreme Court has construed the franchise tax to be imposed upon local incidents other than the simple privilege of doing interstate business in Louisiana. Clearly, Colonial is subject to the tax on the basis of each incident. Colonial has qualified to do business in Louisiana in the corporate form. It is exercising its corporate charter within the state, and it owns and is using part of its capital, plant and property here in the corporate capacity.

This court has long recognized that a nondiscriminating, properly apportioned corporate franchise tax may be imposed upon foreign corporations when the tax is imposed upon local incidents that provide a taxable nexus with the state. *Memphis Natural Gas Company v. Stone*, 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948); *Southern National Gas Corp. v. Alabama*, 301 U.S. 148, 57 S.Ct. 695, 81 L.Ed. 970 (1937); *Stone v. Interstate Natural Gas Co.*, 103 F.2d 544 (5th Cir., 1939) affirmed 308 U.S. 522, 60 S.Ct. 292, 84 L.Ed. 442 (1940); *Wisconsin & Michigan Steamship Company v. Corporation and Securities Commission*, 371 Mich. 61, 123 N.W. 2d 258 (S.Ct.

Mich. 1963), Writs denied 376 U.S. 912, 84 S.Ct. 668, 11 L.Ed. 2d 610 (1964), petition for rehearing denied, 376 U.S. 966, 84 S.Ct. 1123, 11 L.Ed. 2d 984 (1964). See also, *Great Lakes Pipeline Co. v. Oklahoma Tax Commission*, 231 P.2d 655 (S.Ct. Okla. 1951); *Texas Gas Transmission Corp. v. Atkins*, 270 S.W. 2d 384 (S.Ct. Tenn. 1954); *Mid Valley Pipeline Company v. King*, 221 Tenn. 724, 431 S.W. 2d 277 (1968), appeal dismissed for lack of federal question by the U. S. Supreme Court, 393 U.S. 321, 89 S.Ct. 556, 21 L.Ed. 2d 517 (1969); *Roadway Express, Inc. v. Director of Taxation*, 50 N.J. 471, 236 A. 2d 577 (1967), appeal dismissed for lack of a substantial federal question by the U.S. Supreme Court, 390 U.S. 745, 88 S.Ct. 1443, 20 L.Ed. 2d 276 (1968).

It is clear that under Louisiana law Colonial exercises rights, privileges, or immunities enjoyed in the state as an incident to and by virtue of the powers and privileges acquired by the corporate form of existence in this state. Colonial has qualified to carry on or do business in the state in the corporate form. Colonial is exercising its charter in the state. Colonial owns and is using part of its capital, plant and property in this state in the corporate capacity. In exchange for granting these rights, privileges, and immunities to Colonial, the tax is imposed, not upon Colonial's interstate business, but upon the rights, privileges and immunities granted by Louisiana law. The state has granted something for which it seeks return. The return is this franchise tax.

Appellee respectively submits that appellant's argument that the tax is imposed upon the privilege to

do interstate business is frivolous and does not present a substantial federal question to this court. On the contrary, the Louisiana Corporation Franchise Tax is imposed upon Colonial's local incidents which emanate from the State of Louisiana.

CONCLUSION

It is respectfully submitted that the Louisiana Corporation Franchise Tax as applied to Colonial is a valid exercise of the State of Louisiana's taxing power and is not unconstitutional under the Commerce Clause of the Federal Constitution.

It is respectfully submitted that the appeal in this case should be dismissed.

Respectfully submitted,

CHAPMAN L. SANFORD and
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Attorneys for Appellee.

PROOF OF SERVICE

The undersigned, attorney for E. Lee Agerton, Collector of Revenue, defendant-appellee herein, and a member of the Bar of the Supreme Court of the United States hereby certifies that on the _____ day of May, 1974, I served a copy of the foregoing Motion to Dismiss on Colonial Pipeline Company, plaintiff-appellee herein, by mailing a copy of the same in an addressed envelope with postage prepaid to its counsel of record, R. Gordon Kean, Jr., of Sanders, Miller, Downing & Kean, Post Office Box 1588, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this _____ day of May, 1974.

CHAPMAN L. SANFORD and
WHIT M. COOK, II

B-4702, 5-74

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1595

COLONIAL PIPELINE COMPANY,
Appellant

versus

JOSEPH N. TRAIGLE, COLLECTOR OF REVENUE,
Appellee

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLANT

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1595

COLONIAL PIPELINE COMPANY,
Appellant

versus

E. LEE AGERTON, COLLECTOR OF REVENUE,
Appellee

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, First Circuit, is reported at 275 So.2d 834. The opinion of the Supreme Court of Louisiana, reversing the judgment of the Court of Appeal, is reported at 289 So.2d 93.

JURISDICTION

The judgment of the Supreme Court of Louisiana was entered January 14, 1974 (printed in Jurisdictional Statement, page 25). That Court refused appellant's application for rehearing on February 15, 1974. Notices of appeal were filed March 28, 1974. The Jurisdictional Statement was filed April 25, 1974 and probable jurisdiction was noted June 17, 1974. The jurisdiction of this Court rests upon 28 USC 1257(2) and 2101(c).

STATUTES INVOLVED

Sections 401, 601, 606, 1501, 1561, 1570, 1571, 1572, 1573, 1574, 1577 and 1641 of Title 47 of the Louisiana Revised Statutes (La. Rev. Stat.) are set out verbatim in the appendix attached hereto.

QUESTIONS PRESENTED

1. Whether this Court's decisions in *Spector Motor Service v. O'Connor*, 340 U. S. 602, 95 L.Ed. 573, 71 S.Ct. 508 (1951), *Railway Express Agency v. Virginia*, 347 U. S. 359, 98 L.Ed. 757, 74 S.Ct. 558 (1954) and *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U. S. 389, 95 L.Ed. 436, 72 S.Ct. 424 (1952) are still viable delineations of the limitations imposed by the Commerce Clause of the Federal Constitution upon the power of the states to tax interstate commerce.

2. Whether a corporation engaged exclusively in the interstate transportation of petroleum products in and through Louisiana, having no local activities except those purely incidental to its interstate business, may be constitutionally subjected to Louisiana's corporation franchise tax.

3. Whether Louisiana, which admittedly cannot deny or refuse an out of state corporation the right to engage in interstate business within the state in corporate form, may levy an excise tax upon the privilege of engaging in interstate business in corporate form.

4. Whether the levy of the state excise tax upon the privilege of engaging in interstate business in corporate form, coupled with summary and drastic enforcement and collection procedures which authorize complete cessation of the interstate business, is the equivalent of a state license to engage in interstate commerce and thus prohibited by Article I, Section 8, Clause 3 of the Constitution.

STATEMENT OF THE CASE

This is an action for refund of corporation franchise taxes paid under protest by a corporation engaged exclusively in interstate commerce in Louisiana. In 1969 the Louisiana courts held that the franchise tax levied by Louisiana Revised Statute 47:601 could not be constitutionally applied to Colonial under circumstances where "anything and everything" done by Colonial "since its original entry into the State of Louisiana has been purely incidental to its business as a common carrier engaged solely in interstate commerce." *Colonial Pipeline Company v. Louton*, 228 So.2d 718, writ refused 231 So.2d 393 (La. 1969).

In 1970, the Louisiana legislature amended and re-enacted L.R.S. 47:601. Both the state District Court and the Court of Appeal held that the 1970 amendment did not change the operating incidence of the corporation franchise tax. The Supreme Court of Louisiana nonetheless reinterpreted the

statute, holding that the tax is levied upon the privilege of engaging in business in Louisiana in the corporate form and that Colonial is subject to the tax despite the interstate nature of its operations in Louisiana.

Colonial is a Delaware corporation with its principal office in Atlanta, Georgia (Pl. Ex. 6, R45, A43). The pipeline stretches from the Houston, Texas area to the New York harbor area (testimony of Whitaker, Pl. Ex. 17, p. 5-6, R51) with about 3500 miles of main and "stub" lines (only 258 of which are located in Louisiana, R51). Colonial links the great oil refining complexes of East Texas and Louisiana with the population centers of the Southeast and Northeast, delivering more than one million barrels per day of essential gasolines, fuel oils, diesels, and distillates in fourteen states and the District of Columbia (Pl. Ex. 14, R48, A56). The pipeline, with its main line, lateral lines, pumping stations, tank farms and other related facilities, is a true common carrier under the jurisdiction of the Interstate Commerce Commission (testimony of Whitaker, Pl. Ex. 17, p.19, p.41, R51); it owns none of the products it carries but simply transports them for others under a published tariff (testimony of Whitaker, Pl. Ex. 17, p.4, p.41, R51; Pl. Exh. 10(a), 10(b) and 10(c), R47). The flow chart (Pl. Ex. 11, R47) and the list of shippers and consignees (Pl. Ex. 12, R48) show that in the month of June 1971, Colonial delivered nearly 36,000,000 barrels of 30 different refined products from 24 different shippers to 50 different consignees. Clearly this pipeline is a vital link in the nation's energy network.

All of Colonial's activities in Louisiana are in interstate commerce. Although it both originates shipments and delivers products in Louisiana, all of the products delivered originate

in Texas and all of the products originating in Louisiana are delivered into states further to the East (testimony of Whitaker, Pl. Ex. 17, p.22, R51).

Colonial's facilities in Louisiana consist of 258 miles of pipeline (R51), a combination origin and booster station at Lake Charles, a booster station at Welsh, a delivery point at Opelousas, a booster station at Krotz Springs, a booster station at Church Point, a combination origin, booster and stub line delivery point at Baton Rouge, a booster station at Felixville and tankage at Lake Charles and Baton Rouge (testimony of Whitaker, Pl. Ex. 17, p.8, 9 & 10, R51, and Pl. Ex. 7, R45). No intrastate shipments are made in Louisiana (testimony of Whitaker, Pl. Ex. 17, p.16, p.36 & 37, R51). The booster stations are located approximately 30 miles apart throughout the length of the line and their function is to boost the velocity of the fluid in the pipeline sufficiently to move it to the next relay station (testimony of Whitaker, Pl. Ex. 17, p.16, p.43, R45). The tankage is used in injecting products into the line and in making deliveries (Pl. Ex. 7, R45). All of the relay or booster stations are operated by remote control from Atlanta by computer (testimony of Whitaker, Pl. Ex. 17, p.24, p.36, R51).

The state courts concede that all of Colonial's facilities are used exclusively in furtherance of its interstate shipments, for the Louisiana Supreme Court found:

> ". . . of the total pipeline mileage owned by Colonial, approximately 258 are located in the State of Louisiana (in 1963 there were 217 miles of pipeline located in Louisiana). Over this distance, there are several booster pumping stations which keep the product flowing at a sustained rate, and at various collection points (chiefly

Lake Charles and Baton Rouge) there are tank storage facilities. To maintain and help operate this line, Colonial keeps[1] approximately 25-30 employees in this State. These consist of various classifications of mechanics, electricians and other workers whose chief duties are to inspect the line and to perform maintenance chores. There were no administrative officers or personnel in this State during 1970 and 1971, although prior to this time, including the year 1963, Colonial had maintained a Division office in Baton Rouge.

"In its operation in Louisiana, Colonial has apparently done no intrastate shipping of petroleum products. Loads or batches are picked up outside the state and deposited within the state, and picked up within the state for transportation elsewhere. There are apparently no facilities in this state, except for those in Lake Charles and Baton Rouge, for injecting or withdrawing products from the line."[1] (Opinion; printed in Jurisdictional Statement, p.26)

Thus, the state courts themselves have determined that the business actually carried on by Colonial has, at all times, been exclusively interstate commerce and all of its facilities have been utilized exclusively in furtherance of its interstate business. The Collector has conceded and the Louisiana courts have held that there is no question but that anything and everything done by this corporation since its original entry into the State of Louisiana has been purely incidental to its business as a common carrier engaged solely in the interstate transportation of vital energy products.

On May 9, 1962, Colonial qualified to do interstate business in Louisiana and has remained so qualified since that

[1] Actually there is a small delivery point at Opelousas also (Pl. Ex. 7, R45, A52).

date (Pl. Ex. 6, R45, A44). Although the Louisiana court refers to Colonial as having "qualified to do business in Louisiana" (opinion, Jurisdictional Statement, p.26), Plaintiff's Exhibit 6 clearly shows that Colonial specifically limited its qualification in Louisiana to the doing of **interstate** business. (A44).

In 1963 the Collector sought to impose the Louisiana franchise tax on Colonial's activities. Colonial paid the tax under protest and successfully prosecuted a suit for its refund, based upon the proposition that the Louisiana tax could not be constitutionally applied to Colonial's exclusively interstate operations. Both the Louisiana Court of Appeal, First Circuit, and the Supreme Court of Louisiana concluded that the tax could not be constitutionally applied to Colonial. *Colonial Pipeline Company v. Mouton, supra.* That decision became final in 1969.

Thereafter, the Louisiana Legislature by Act 325 of 1970, amended L.R.S. 47:601, and the Collector renewed his efforts to impose the franchise tax on Colonial, claiming taxes due for each of the years 1970 and 1971 (Pl. Exs. 2 and 3, R44). Colonial paid the tax under protest for the years in question (Pl. Ex. 4, R44 and Pl. Ex. 5, R45) as authorized by L.R.S. 47:1576, and filed this suit for a refund. It has been stipulated that the tax paid for 1970 was $80,635.02,[2] that the tax paid for 1971 was $69,884.78 and that the total refund to which Colonial would be entitled, if successful in these proceedings, is the sum of $150,719.80 (Pre-Trial Order, R26, A25).

[2] The Louisiana Supreme Court held that Colonial was liable only for the minimum tax for 1970 and reduced this amount to $10.

Colonial pays ad valorem taxes to Louisiana and ten of its parishes, as well as state income taxes. For the years 1970 and 1971, ad valorem taxes totaled $743,561.34 and income taxes totaled $196,621.00 (Pl. Ex. 8, R46).

The Louisiana District Court and the Court of Appeal, First Circuit, both held that the 1970 amendment to Louisiana's franchise tax did not change the operating incidence of the tax and that it could not be constitutionally applied to Colonial's interstate activities. The Supreme Court of Louisiana granted a writ of review and reversed the lower courts holding that the operating incidence of the tax, even before the 1970 amendment, was upon the privilege of engaging in business in Louisiana in corporate form rather than simply upon the privilege of engaging in business in Louisiana.

It is from this Judgment that appellant has brought this appeal.

SUMMARY OF THE ARGUMENT

The states may not "carve out" an "incident from the integral economic process of interstate commerce" as the operating incidence of an excise tax such as the Louisiana franchise tax.

Colonial's **right** to engage in its interstate business in Louisiana is not subject to that state's grant or denial, and thus is not subject to Louisiana's taxing power. Nor is Colonial's **right** to engage in its interstate business in Louisiana in corporate form subject to that state's grant or denial.

A franchise tax laid upon Colonial's doing business in corporate form is a tax upon an incident "carved out" of the

"integral economic process of interstate commerce." Thus, the practical operating result of the Louisiana tax is a privilege, license or occupation tax upon Colonial's interstate transportation business in circumstances where Louisiana may not grant or deny Colonial's right to so operate and the state does not contribute to the furtherance of Colonial's interstate business. Where Louisiana can shut off the flow of interstate commerce through collection procedures which could compel a cessation of Colonial's interstate business in the absence of payment, the Louisiana franchise tax lays a burden on interstate commerce, prohibited by Article 1, Section 8, Clause 3 of the Constitution of the United States (the Commerce Clause).

ARGUMENT

I

A CORPORATION ENGAGED EXCLUSIVELY IN THE INTERSTATE TRANSPORTATION OF PETROLEUM PRODUCTS IN AND THROUGH LOUISIANA, HAVING NO LOCAL ACTIVITIES EXCEPT THOSE PURELY INCIDENTAL TO ITS INTERSTATE BUSINESS, MAY NOT CONSTITUTIONALLY BE SUBJECTED TO THAT STATE'S CORPORATION FRANCHISE TAX.

This appeal presents substantial constitutional questions involving the extent of the taxing power of the states over foreign corporations engaged exclusively in interstate transportation. In *Spector Motor Service v. O'Connor*, 340 U.S. 602, 95 L.Ed. 573, 71 S.Ct. 508 (1951) and *Railway Express Agency v. Virginia*, 347 U.S. 359, 98 L.Ed. 757, 74 S.Ct. 558 (1954) (the first *Railway Express* case) this Court made it plain that Article I, Section 8, Clause 3 of the Constitution

of the United States prohibits a state franchise tax, the operating incidence of which falls upon the privilege of carrying on exclusively interstate transportation in and through the state. In *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, 96 L.Ed. 436, 72 S.Ct. 424 (1952), this Court made it equally plain that it would not permit the states to "carve out" an "incident from the integral economic process of interstate commerce" as the operating incidence of an excise tax, for to do so would result in "a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause."

The decision of the Supreme Court of Louisiana sustaining the Louisiana excise tax levied upon Colonial's franchise for the privilege of carrying on exclusively interstate transportation in the state **in corporate form** is but the latest in a series of state court decisions maintaining successively more direct state levies upon interstate commerce. This appeal raises for determination just how far the states may constitutionally go in taxing exclusively interstate business through the device of fragmentizing the "doing business" concept, and by a tax levied on one fragment of the entire economic process of doing interstate business, impose a privilege, license or franchise tax on the interstate business itself.

We take it as established that appellant's right to engage in the interstate transportation business in Louisiana is not subject to that state's grant or denial, and thus not subject to that state's taxing power. *Nippert v. City of Richmond*, 327 U.S. 416, 90 L.Ed. 760, 66 S.Ct. 586 (1956). We further take it as established that appellant's right to engage in interstate business in Louisiana in corporate form is not subject to that state's grant or denial, and that a license, privilege or

occupation tax levied upon the privilege of engaging in interstate business is invalid. *Spector Motor Service, supra.* Nonetheless, Louisiana has declared in effect: while we acknowledge that we cannot levy a tax upon a corporation's franchise to do interstate business, we can and do tax the corporation's franchise to do such business **in the corporate form.** To accomplish that, Louisiana has reinterpreted its franchise tax statute, redesignating the operating incidence of tax as a tax on doing business in corporate form (representing the taxable local incident) as a means of avoiding the "doing business" concept; thus further fragmenting it.

We say that Louisiana has "reinterpreted" its franchise tax, for in 1969, the Louisiana courts construed the Louisiana corporation franchise tax to be an exaction levied upon the privilege of doing business in Louisiana and, citing *Spector Motor Service, supra*, held that the tax could not be constitutionally applied to Colonial because Colonial was engaged exclusively in the interstate transportation of refined petroleum products in and through that state. *Colonial Pipeline Company v. Mouton*, 228 So.2d 718, writs refused 231 So.2d 393 (La. 1969). After the Louisiana Legislature adopted an amendment to the statute[3] which did not change the nature or incidence of the franchise tax,[4] the Supreme Court of Louisiana held in the present case that the state could constitutionally tax Colonial's interstate transportation business because it was not taxing "the general privilege of doing interstate business" but the privilege of doing that business in cor-

[3] Act No. 325 of 1970, amending L.R.S. 47:601; set out in Appendix C of the Jurisdictional Statement, p. 52, and the Appendix hereto, p. 30.

[4] There was dispute as to the effect of the 1970 amendment but the Louisiana Supreme Court held that assuming there has been no essential change in the statute it would nevertheless hold as it did, not withstanding the earlier contrary decision of the Louisiana Court of Appeal in which writs were refused. Jurisdictional Statement, p. 32.

porate form, predicating the tax upon privileges enjoyed by corporations.

The basis of the state court holding is summed up in the following language of the opinion:

> "The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing business in the State, does not in our view detract from the fact that the local incident taxed is the **form of doing business** rather than the business done by that corporation. And it is our view that the local incident is real and sufficiently distinguishable, so that taxation thereof does not, under the controlling decisions of the United States Supreme Court, violate the Commerce Clause." (Jurisdictional Statement, p. 40; emphasis by the Court)

The Louisiana Supreme Court, as well as the highest courts of other states, has seized upon certain decisions of this Court as signifying a retreat from the clear holdings of cases such as *Spector Motors, Railway Express*, and *Memphis Steam, supra*. The state court here concludes that the following decisions of this Court demonstrate "inroads into the tax immune status of exclusively interstate activity." (Jurisdictional Statement, p. 37).

Memphis Natural Gas Company v. Stone, 335 U.S. 80, 92 L.Ed. 1832, 68 S.Ct. 1475 (1948), although decided prior to *Spector Motors*, is one of those cases frequently cited. **That case involved a gas pipeline company which actually made sales of its products in Mississippi.** This Court held that it was bound by the determination of fact made by the Mississippi Supreme Court that certain of the corporation's activities in Mississippi were of a local nature, sufficiently separate and apart from the flow of commerce to support state taxation. The tax involved in *Memphis Gas* was measured by capital stock, basically therefore, a property measure, similar to the "in lieu" tax subsequently approved in *Railway Express, infra*.

Here, appellant is a common carrier of refined petroleum products, operating under the jurisdiction of the Interstate Commerce Commission. Colonial makes no sales of any sort in Louisiana; its business is purely interstate transportation of refined petroleum products for others at tariffs approved by the Interstate Commerce Commission. As was the fact situation in *Ozark Pipe Line Corp. v. Monier*, 266 U.S. 555, 69 L.Ed. 439, 45 S.Ct. 184 (1925), all of Colonial's activities within the state of Louisiana are admittedly, ". . . exclusively in furtherance of its interstate business, and the property itself, however extensive or of whatever character, * * * likewise devoted only to that end. They were the means and instrumentalities by which that business was done and in no proper sense constituted, or contributed to, the doing of a local business." (266 U.S. at 565, 69 L.Ed. at 443, 45 S.Ct. at 184).

In addition, unlike the tax in *Memphis Gas*, the Louisiana franchise tax includes "surplus, undivided profits, and borrowed capital" in the tax base (La. Rev. Stat. 47:606 A), as a consequence of which stocks and bonds physically located outside the State of Louisiana are includible in the allocation formula. *Kansas City Southern Railway Co. v. Reily*, 242 La. 235, 135 So.2d 915, appeal dismissed, 370 U.S. 289, 8 L.Ed.2d 501, 82 S.Ct. 1561 (1962).

Another decision relied upon by the state court is *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 3 L.Ed.2d 421, 79 S.Ct. 357 (1959), in which this Court

sustained a properly apportioned state net income tax levied upon a corporation engaged in interstate commerce. Louisiana and other states have used this decision as justification for disregarding *Spector Motor Service*, and for approving state franchise tax levies upon exclusively interstate business, despite the positive recognition in *Northwestern* that *Spector Motor Service* "was not a levy on net income, but an excise or tax placed on that franchise of a foreign corporation engaged 'exclusively' in interstate operations." Moreover, Colonial pays and has not complained about the levy of the substantial income tax imposed upon net income by Louisiana, but it does complain about paying both, particularly when appellant is also paying substantial amounts of state and local ad valorem taxes on property owned by it in Louisiana.

Railway Express Agency v. Virginia, 358 U.S. 434, 3 L.Ed. 2d 450, 79 S.Ct. 411 (1959) (the second *Railway Express* case) is also taken by the state court as an erosion of this Court's prior holdings in *Spector*, and in the earlier case of *Memphis Steam Laundry Cleaner, Inc. v. Stone*, all despite the refusal of this Court in *Memphis Steam* to permit fragmentation of the "doing business" concept:

> "If the Mississippi tax is imposed upon the privilege of soliciting interstate business, the tax stands on no better footing than a tax upon the privilege of doing interstate business." (342 U.S. at p. 393, 96 L.Ed. at p. 440)

To paraphrase here "if the Louisiana tax is imposed upon the conduct of interstate business in corporate form," then it stands on no better footing than a tax upon the privilege of doing Colonial's interstate business. This state court reliance upon *Railway Express* as representing a departure from these fundamental principles is obviously misplaced. The significant

distinction between the tax in *Railway Express* and the Louisiana franchise tax is that the Virginia tax was levied *in lieu* of all other taxes on intangible property and in lieu of property taxes on the rolling stock of the corporation. In sustaining the Virginia tax, this Court was careful to point out that it was not "denominated a license tax laid in the 'privilege of doing business in Virginia,' " nor was it "in addition to the property tax," nor was it "a condition precedent to its engaging in interstate commerce in the Commonwealth." It was, in substance, a tax on property, permissible under a long line of cases approving state property taxes as an indirect levy.

The Louisiana tax does not purport to be *in lieu* of any of the other taxes which appellant is paying; it is by any name or interpretation, still a license tax on the privilege of doing business, and as we shall hereafter indicate, it is an effective condition precedent to Colonial's engaging in interstate commerce in Louisiana.

General Motors Corp. v. Washington, 377 U.S. 436, 12 L.Ed.2d 430, 84 S.Ct. 1564 (1964), likewise cited as support for fragmentation of the "doing business" concept, involved a state tax levied upon the corporation and measured by General Motors' substantial gross wholesale sales of motor vehicles in the state. The tax was sustained because of the company's extensive and undisputed local activity in connection with those sales, which activity was sufficiently separate and distinct from the flow of interstate commerce to support the tax. As pointed out above, Colonial here is a common carrier of refined petroleum products, owns no products, and makes no sales in Louisiana.

The trend among the states has been one of steady expan-

sion of this Court's prior holdings and a correspondingly increasingly heavy burden upon interstate commerce, as is illustrated by the state court decisions discussed below.

The Supreme Court of Oklahoma initiated the erosion of this Court's holding in *Spector Motor Service* within a month after this Court announced its opinion. On April 24, 1951, the Oklahoma court decided *Great Lakes Pipe Line Co. v. Oklahoma Tax Commission*, 251 P.2d 655 (Okla. 1951). That case involved an interstate pipeline and an Oklahoma corporation license tax levied "as a condition of existing or doing or attempting to do business in this State measured by capital used, invested or employed in the State." The state court found as a fact that Great Lakes "definitely engaged in intrastate commerce during the period for which it was taxed" (231 P.2d at 659). The opinion, however, contains language to the effect that the tax is being levied not only on the basis of the intrastate commerce but by reason of some fancied distinction between doing business and doing business in a corporate capacity. The Oklahoma court distinguished *Spector Motor Service* as follows:

> "In that case the right to exist was not taxed, but only the privilege of carrying on or doing business in the state of Connecticut . . ." (231 P.2d at 661)

Apparently no attempt was made to secure this court's review of the Oklahoma decision and the finding that the taxpayer was engaged in intrastate as well as interstate business was sufficient to support the levy of the tax under *Spector Motor Service* and prior decisions of this court.

The "inroads" approach of the Oklahoma decision was adopted by the Tennessee Supreme Court in *Texas Gas Transmission Corp. v. Atkins*, 270 SW2d 384 (Tenn. 1954). In that case, the taxpayer did intrastate business in Tennessee; it made sales of gas in the state of Tennessee as well as purchases of gas in that state. In addition, the company had voluntarily qualified to do **intrastate** business in Tennessee thereby gaining rights and privileges which it otherwise would not have acquired. The Tennessee court, however, concluded that the excise tax in question was levied upon the right to do business in Tennessee in corporate form and distinguished *Spector Motor Service* on that basis. Again, the state court fragmented the doing business concept, seizing upon the privilege of engaging in business in corporate form in the state, together with admitted local activities involved in the sale and purchase of gas and the voluntary qualification to do intrastate business as justification for the tax. Again, apparently no attempt was made to secure this court's review of that opinion; but, in any event, the case is clearly distinguishable, both under the facts and the law, from the instant case.

The case of *Roadway Express, Inc. v. Director*, 50 N.J. 471, 236 A.2d 577 (1967, appeal dismissed), 390 U.S. 745, 20 L.Ed. 276, 88 S.Ct. 1443 (1968) involved a motor freight trucking company conducting interstate commerce involving substantial local activities and property. The New Jersey business corporate tax was levied upon all corporations "in lieu of other State, county or local taxation upon or measured by intangible personal property." The measure of the tax was allocated net worth plus allocated net income. New Jersey did not levy an income tax and the state court commented that the business corporation tax has all the attributes of a direct levy on income (236 A.2d at 582). The New Jersey Supreme Court sustained the validity of the tax upon the basis of its "in lieu" features and upon the corporation's substantial local

activities, specifically, its vehicles which were registered elsewhere did not pay license fees to New Jersey but made extensive use of the state's highway system and the vehicles and cargoes enjoyed the protection of the state police. The court commented, however, after reviewing this Court's recent cases, that the minority view of *Spector Motor Service* has now become this Court's general view (236 A.2d 585).

This Court's dismissal of the appeal in the New Jersey case for want of a substantial federal question is fully supported by *Spector Motor Service* and other cases predicated upon the substantial local activities of the corporation and more particularly the "in lieu" features of the tax which this Court had approved in the second *Railway Express Agency* case in 1959. The language of the state court opinion, however, indicates a tendency to ignore the Commerce Clause as a viable restraint upon the state's taxing power.

Mid-Valley Pipeline Co. v. King, 431 S.W.2d 277 (Tenn. 1968); appeal dismissed, 393 U.S. 321, 21 L.Ed.2d 517, 89 S.Ct. 556 (1969) involved an excise tax levied upon allocated net earnings and a franchise tax levied upon capital stock surplus and undivided profits. The Tennessee Supreme Court sustained the application of the tax to an interstate common carrier of crude oil citing the New Jersey case and the earlier Tennessee case of *Texas Gas Transmission Corp. v. Atkins, supra*. The court held that local incidents or activities may be a basis for a franchise or excise tax, measured by properly apportioned net income of a foreign corporaion engaged solely in interstate commerce, provided the local activities can be separated from interstate commerce. The court further held that the company has and is employing or owning capital or property

in Tennessee and exercising its corporate franchise within Tennessee and that it maintains its rights of way and other valuable properties located in the state in its corporate capacity and further that it has and is using Tennessee courts to vindicate its rights. The Tennessee court held that these local activities, although incidental to the conduct of interstate commerce are taxable under the decisions of this court.

While the court did not specifically note that point, the Tennessee tax apparently had "in lieu" features since it was levied upon foreign corporations doing business in the state without qualifying to do business "as a recompense for the protection of their local activities and as compensation for the benefits they receive from doing business in Tennessee."

As noted above, this Court dismissed the appeal for want of a substantial federal question.

While each of these state court decisions may be justified upon the peculiar facts and particular state statutory provisions, they illustrate the continuing "inroads" into the heretofore generally accepted excise tax immunity of businesses engaged exclusively in interstate commerce. The Louisiana Supreme Court decision is the latest and most far-reaching of these decisions. We submit that the time has come for this Court to re-affirm the Commerce Clause as the intended safeguard against the free movement of goods between the states. In the final analysis, if the state cannot exact a levy as a condition of commencing interstate business, it ought not to be permitted, under the guise of fragmentation to exact a levy which must be paid as a requirement for continuing the conduct of an interstate business in the state.

II

LOUISIANA, WHICH ADMITTEDLY CANNOT DENY OR REFUSE AN OUT OF STATE CORPORATION THE RIGHT TO ENGAGE IN INTERSTATE BUSINESS WITHIN THE STATE IN CORPORATE FORM, CANNOT LEVY AN EXCISE TAX UPON THIS PRIVILEGE OF ENGAGING IN INTERSTATE BUSINESS IN CORPORATE FORM.

We suggest to the Court that the Louisiana corporation franchise tax, although couched in more sophisticated grammar, is actually the equivalent of the Kentucky license tax upon foreign corporations which this Court struck down in *Crutcher v. Kentucky*, 141 U.S. 47, 35 L.Ed. 649, 11 S.Ct. 851. Louisiana seeks to justify its tax by contending it is not a tax upon the privilege of doing interstate business, but is a **tax upon foreign corporations doing interstate business.**

A few references to the Louisiana Supreme Court's construction of the tax levy will make this plain:

> "The thrust of the statute is to tax not the interstate business done in Louisiana by a foreign corporation, **but the doing of business in Louisiana in a corporate form** . . ." (Jurisdictional Statement, p. 33; emphasis supplied.)

> ". . . (The statute) taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this State, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the State." (Jurisdictional Statement, p. 39)

> ". . . the local incident taxed is the **form of doing business** rather than the business done by the corporation . . ." (Jurisdictional Statement, p. 40; emphasis by the Court)

In *Crutcher v. Kentucky, supra*, the state sought to sustain its license tax upon foreign corporations doing interstate business upon the grounds that the tax was non-discriminatory and levied upon local corporations as well. This Court held:

> ". . . **to carry on interstate commerce is not a franchise or a privilege granted by the state;** it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying out their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.
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> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it." (141 U.S. at 58, 35 L.Ed. at 652)
>
> See also *International Text-Book Co. v. Pigg*, 217 U.S. 91, 107, 54 L.Ed. 678, 685, 30 S.Ct. 481 (1910); *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 66 L.Ed. 239, 42 S.Ct. 106; and *Lilly & Co. v. Sav-On-Drugs, Inc.*, 366 U.S. 276, 6 L.Ed.2d 288, 81 S.Ct. 1913 (1961).

Although the Louisiana tax is couched in terms of the levy of a corporation franchise tax, it is the equivalent of a license tax because the state can completely shut off the flow

of commerce in connection with the levy and collection of the tax. As pointed out above, the payment of the tax is a condition precedent to the continuing conduct of interstate business in Louisiana. Under these circumstances, it should have no greater standing than the exaction of a levy as a condition of commencing interstate business in the state.

III

THE LEVY OF A STATE EXCISE TAX UPON THE PRIVILEGE OF ENGAGING IN INTERSTATE BUSINESS IN CORPORATE FORM, COUPLED WITH DRASTIC ENFORCEMENT AND COLLECTION PROCEDURES WHICH AUTHORIZE COMPLETE CESSATION OF THE INTERSTATE BUSINESS, IS THE EQUIVALENT OF A STATE LICENSE TO ENGAGE IN INTERSTATE COMMERCE AND IS PROHIBITED BY ARTICLE I, SECTION 8, CLAUSE 3 OF THE CONSTITUTION.

Louisiana's enforcement and collection procedures are both drastic and summary.

Section 401 of the Louisiana law provides that failure to pay the tax authorizes the collector to rule the taxpayer into court to show cause why he should not be ordered to cease "further pursuit of the business taxed." The rule is required to be heard in not less than two nor more than ten days and is heard by preference. "If the rule is made absolute, the order therein rendered shall be considered a judgment in favor of the state prohibiting the taxpayer from the further pursuit of the business until such time as he has paid the delinquent tax, interest, penalties and costs, and every violation of the

injunction shall be considered a contempt of court, and punished according to law."

Thus, had Colonial not paid the franchise tax, Louisiana could have obtained an injunction, within ten days, ordering Colonial to cease "further pursuit of the business taxed." Since the business taxed and Colonial's only business, is the interstate transportation of refined petroleum products, Louisiana could almost instantly shut off the flow of commerce, depriving the other 13 states and the District of Columbia of vital energy supplies.

It was estimated in the first Colonial case in 1968 that the cost to Colonial of such a shutdown was $15,000 to $16,000 per hour (testimony of Whitaker, Pl. Ex. P-17, p.26, R51). No doubt the hourly cost would be greater today. The 1968 figures do not consider the cost of such a shutdown to Colonial's shippers and consignees nor the resulting loss of energy supplies to consumers in other states and the District of Columbia which are served by Colonial's system.

La. Rev. Stat. 47:1641 provides that failure to pay the tax is a felony, punishable by a fine of not more than ten thousand dollars or imprisonment for not more than five years or both.

Section 1570 defines "distraint" as the right to levy upon and seize and sell "any property or rights to property of the taxpayer." Under Sections 1571-1573 the collector, at his discretion may distrain any property of a taxpayer by making a list of the property seized and mailing a copy to the taxpayer, along with a note of the sum demanded and a notice of the time and place where the property will be sold. The sale may

be held 15 calendar days from the date of the notice mailed to the taxpayer.

Thus, had Colonial not paid the tax, the state could have charged Colonial with a felony, and shut down the pipeline within ten days, moreover, within fifteen days the state could have sold at public auction enough of Colonial's interstate facilities to pay tax, interest, penalties and costs of collection.

Had the collector so chosen, he could have also proceeded against Colonial by summary court proceedings under section 1574, upon not less than two nor more than ten days notice. No new trial, rehearing or devolutive appeals are allowed from any such summary judgment. Suspensive appeals are authorized by the statutes but only upon posting bond in a sum double that of the total amount of the judgment, including costs.

Under La. Rev. Stat. 47:1577 the collector is further authorized to record notice of such alleged tax in any parish where Colonial owns property and the alleged tax then operates as a "lien, privilege and mortgage on all of the property" of Colonial in the State of Louisiana.

In view of Louisiana's drastic enforcement and collection procedures which authorize the state officials to summarily shut down interstate operations, the holding of the Court of Appeals, in *Ideal Cement Co. v. United Gas Pipe Line*, Fifth Circuit, 1960, 282 F.2d 574 (cert. denied, 369 U.S. 837, 7 L.Ed.2d 842, 82 S.Ct. 863), is apropos here:

> "• • • What the City has done in this case, by the words of its ordinance, is to make the procurement of a license a precondition of engaging in interstate commerce within its jurisdiction.

> "Nor is the evil attending license taxes on interstate commerce merely a question of labels. Provisions for the levy of license taxes are ordinarily accompanied by summary collection procedures. So here, the Alabama Code provides for injunctions against firms who fail to pay municipal license taxes on time. Thus, the effect of nonpayment of a license tax is not the usual slight disruption of commerce which may follow a levy on a delinquent taxpayer's property. Rather, interstate commerce is brought to an immediate halt by means of the injunctive remedy. Moreover, doing business without a license will bring down the violator extreme criminal sanctions."

In *Crutcher v. Kentucky, supra*, the state's tax was an outright license tax imposed upon foreign corporations who wished to do business in Kentucky. The Louisiana statute as construed by the state's highest court is a franchise tax imposed upon foreign corporations who wish to do interstate business in corporate form[5] in Louisiana. Louisiana cannot deny appellant's right to do business in the corporate form in Louisiana. *Crutcher v. Kentucky* holds that the power of Congress over interstate commerce is as absolute as it is over foreign commerce and points out that the prerogative, the responsibility and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies, or foreign individuals with whom they may have relations of foreign commerce belong to the government of the United States and not to the governments of the several states. Further, *Crutcher* holds: "and the same thing is exactly true with respect to interstate commerce as it is with respect to foreign commerce." (141 U.S. at 58)

Thus it is plain that Colonial's privilege of engaging in

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[5] We take it as self-evident that a corporation cannot do business, interstate or otherwise, in other than its corporate capacity.

interstate transportation in and through Louisiana in corporate form flows from the United States, not the state.

Tests or questions propounded in earlier decisions of this Court and alluded to by the State court become pertinent: "whether the State has exerted its power in proper proportion to appellant's activities within the State and to appellant's consequent enjoyment of the opportunities and protections which the State has afforded." (*General Motors v. Washington, supra*, 377 U.S. at 441); "the controlling question is whether the State has given anything for which it can ask return." (*Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 85 L.Ed. 267, 61 S.Ct. 246 (1940))

While Colonial owns property in Louisiana which receives protection from state and local authorities, Colonial pays substantial ad valorem and income taxes for whatever "opportunities and protections" flow from property ownership.

Under *Crutcher v. Kentucky, supra*, to carry on interstate commerce in corporate form is not a right or privilege granted by the state; thus Louisiana has not afforded to appellant the very "operating incidence" upon which it seeks to levy the tax. **And since Louisiana has not given appellant the right or privilege of doing interstate business in corporate form, the state cannot ask a return for it.**

As construed by Louisiana's highest court, the state tax is levied upon appellant's privilege of carrying on interstate commerce in corporate form. That is not a privilege bestowed by Louisiana and the practical result of the statute is to require out-of-state corporations to take out a license for carrying on interstate commerce.

While great respect is due the determination of the operating incidence of a state tax, *Memphis Natural Gas v. Stone, supra*, it is not conclusive upon this Court, which must consider and determine the practical effect of the tax upon interstate commerce, first *Railway Express* case, and second *Railway Express* case, *supra*.

The practical operating result of the Louisiana tax is a privilege, license or occupation tax upon appellant's interstate transportation business in circumstances where Louisiana does not contribute to the furtherance of that interstate business, and under circumstances where Louisiana can shut off the flow of interstate commerce through collection procedures which compel a cessation of Colonial's interstate business in the absence of payment.

CONCLUSION

It is submitted that La. Rev. Stat. 47:601, as construed by the highest court of Louisiana, is an unconstitutional burden upon interstate commerce under the Facts of this case. We respectfully ask that this Court enter judgment reversing the judgment of the Supreme Court of Louisiana, declare the statute unconstitutional as it applies to Colonial, and grant Colonial judgment against the Collector in the amount of $150,719.80, together with interest as prescribed by law.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, one of the attorneys for Colonial Pipeline Company, plaintiff-appellant herein, and a member of the Bar of the Supreme Court of the United States hereby certifies that on the 29th day of July, 1974, I served three copies of the foregoing brief on Joseph N. Traigle, successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, by placing same in an envelope addressed to his counsel of record, Chapman L. Sanford, and Whit M. Cook II, State of Louisiana, Department of Revenue, Legal Division, Post Office Box 201, Baton Rouge, Louisiana 70821, and depositing said envelope in the United States post office at Baton Rouge, Louisiana, with first class postage prepaid.

Baton Rouge, Louisiana, this 29th day of July, 1974.

R. Gordon Kean, Jr.

APPENDIX

STATUTES INVOLVED

The following sections of Title 47 of the Louisiana Revised Statutes are involved in this case:

§ 401. Failure to pay tax; judgment prohibiting further pursuit of business

Failure to pay the tax levied by this Chapter shall ipso facto, without demand or putting in default, cause the tax, interest, penalties and costs to become immediately delinquent, and the collector of revenue is hereby vested with authority, on motion in a court of competent jurisdiction, to take a rule on the delinquent taxpayer to show cause in not less than two nor more than ten days, exclusive of holidays, why the delinquent taxpayer should not be ordered to cease from further pursuit of the business taxed under this Chapter. This rule may be tried out of term and in chambers, and shall always be tried by preference. If the rule is made absolute, the order therein rendered shall be considered a judgment in favor of the state prohibiting the taxpayer from the further pursuit of the business until such time as he has paid the delinquent tax, interest, penalties and costs, and every violation of the injunction shall be considered a contempt of court, and punished according to law.

§ 601. Imposition of tax (before 1970 amendment)

Every domestic corporation and every foreign corporation, exercising its charter, authorized to do or doing business in this state, or owning or using any part or all of its capital or plant in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this chapter shall pay a tax at the rate of one dollar and 50/100 ($1.50) for each one thousand dollars ($1,000.00), or major fraction thereof on the amount of its capital stock, surplus, undivided

profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than ten dollars ($10.00) in any case. The tax levied herein is due and payable for the privilege of carrying on or doing business, the exercising of its charter or the continuance of its charter within this state, or owning or using any part or all of its capital or plant in this state.

Amended by Acts 1958, No. 437.

§ 601. Imposition of tax (After 1970 Amendment)

Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents.

(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organization, as well as, the buying, selling or procuring of services or property.

(2) The exercising of a corporation's charter or the continuance of its charter within this state.

(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

As used herein the term "domestic corporation" shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term "foreign corporation" shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any state, territory or district, or foreign country.

Amended by Acts 1970, No. 325.

§ 606. Allocation of taxable capital

A. General allocation formula.

For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios:

(1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable to

Louisiana bears to the total net sales made to customers in the regular course of business and other revenue. For the purposes of this Sub-section net sales and other revenues attributable to Louisiana shall be determined as follows:

(a) Sales attributable to this state shall be all sales where the goods, merchandise or property is received in this state by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state. Revenue derived from a sale of property not made in the regular course of business shall not be considered.

(b) Revenues attributable to this state derived from air transportation shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana.

(c) Revenues attributable to this state derived from transportation of crude petroleum, natural gas, petroleum products or other commodities for others through pipelines shall include all gross revenue derived from operations entirely within this state plus a portion of any revenue from operations partly within and partly without this state, based upon the ratio of the number of units of transportation service performed in Louisiana in connection with such revenue to the total of such units. A unit of transportation service shall be the transporting of any designated quantity of crude petroleum, natural gas, petroleum products or other commodities for any designated distance.

(d) Revenues attributable to this state derived from transportation other than aircraft or pipeline shall include all

such income that is derived entirely from sources within this state, and a portion of revenue from transportation partly without and partly within this state, to be prorated subject to rules, and regulations of the collector, which shall give due consideration to the proportion of service performed in Louisiana.

(e) Revenues from services other than those described above shall be attributed within and without Louisiana on the basis of the location at which the services are rendered.

(f) Rents and royalties from immovable or corporeal movable property, shall be attributed to the state where such property is located at the time the revenue is derived.

(g) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

(h) Other interest and dividends shall be attributed to the state in which the securities or credits producing such revenue have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs shall be at the commercial domicile of the corporation.

(i) Royalties or similar revenue from the use of patents, trade marks, copyrights, secret processes and other similar intangible rights shall be attributed to the state or states in which such rights are used.

(j) Revenues from a parent or subsidiary corporation shall be allocated as provided in Sub-section B of this Section.

(k) All other revenues shall be attributed within and without this state on the basis of such ratio or ratios, prescribed by the collector, as may be reasonably applicable to the type of revenues and business involved.

(2) The ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the value of all of its property and assets wherever situated or used. In determining value, depreciation and depletion reserves must be deducted from the book values of the properties in question. The various classes of property and assets shown below shall be allocated within and without Louisiana on the bases indicated:

(a) Cash shall be allocated to the state in which located.

(b) Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(c) Trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered.

(d) Investments in and advances to a parent or subsidiary shall be allocated as provided in Sub-section B of this Section.

(e) Notes and accounts other than those notes and accounts described under items (b) through (d) above shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(f) Stocks and bonds not included in (b) or (d) above shall be allocated to the state in which they have their business situs or in the absence of a business situs to the state in which is located the commercial domicile of the taxpayer.

(g) Immovable and corporeal movable property shall be allocated within and without Louisiana on the basis of actual location. Corporeal movable property of a class which is not normally located within a particular state the entire taxable year shall be allocated within and without Louisiana by use of a ratio or ratios which shall give due consideration to the usage within and without this state. Mineral leases and royalty interests shall be allocated to the state in which the property covered by the lease or royalty interest is located.

(h) All other assets shall be allocated within or without Louisiana on the basis, prescribed by the collector, as may reasonably be applicable to the assets and the type of business involved.

B. **Allocation of intercompany items.** For the purpose of allocation, investments in, advances to, or revenues from a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the parent or subsidiary corporation. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly or substantially owned by another corporation and whose management, business policies and operations are, howsoever, actually, wholly or substantially controlled by another corporation; which latter corporation shall be termed the parent corporation.

C. **Minimum allocation: assessed value of real and personal property.** The portion of capital stock, surplus, undivided profits and borrowed capital allocated for franchise taxation under this Chapter shall in no case be less than the total assessed value of real and personal property in this state of each such domestic or foreign corporation for the calendar year preceding that in which the tax is due.

§ 1501. Definitions

The terms "Collector" or "Collector of Revenue" when

used in this Title mean the Collector of Revenue for the State of Louisiana. The term "Sub-title" means and includes all the chapters in Sub-title II of this Title 47 and any other Chapter of these Revised Statutes, the administration of which has been delegated to the Collector of Revenue.

§ 1561. Alternative remedies for the collection of taxes

In addition to following any of the special remedies provided in the various Chapters of this Sub-title, the collector may, within his discretion, proceed to enforce the collection of any taxes due under this Sub-title, by means of any of the following alternative remedies or procedures:

(1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.

(2) Summary court proceeding, as provided in R.S. 47:1574.

(3) Ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

The collector may choose which of these procedures he will pursue in each case, and the counter-remedies and delays to which the taxpayer will be entitled will be only those which are not inconsistent with the proceeding initiated by the collector; provided that in every case the taxpayer shall be entitled to proceed under R.S. 47:1576 except after he has filed a petition with the board of tax appeals for a redetermination of the assessment, and except when there is pending against him a suit involving the same tax obligation; and provided further, that the fact that the collector has initiated proceedings under the assessment and distraint procedure will not preclude him from thereafter proceeding by summary or ordinary court proceedings for the enforcement of the same tax obligation.

§ 1570. Distraint defined

The words "distraint" or "distrain" as used in this Subtitle, shall be construed to mean the right to levy upon and seize and sell, or the levying upon or seizing and selling, of any property or rights to property of the taxpayer including goods, chattels, effects, stocks, securities, bank accounts, evidences of debt, wages, real estate and other forms of property, by the collector or his authorized assistants, for the purpose of satisfying any assessment tax, penalty or interest due under the provisions of this Sub-title.

Property exempt from seizure by Articles 644 and 645 of the Louisiana Code of Practice is exempt from distraint and sale herein.

§ 1571. Distraint procedure

Whenever the collector or his authorized assistants shall distrain any property of a taxpayer, he shall cause to be made a list of the property or effects distrained, a copy of which, signed by the collector or his authorized assistants shall be sent by registered mail to the taxpayer at his last known residence or business address, or served on the taxpayer in person. This list shall be accompanied with a note of the sum demanded and a notice of the time and place where the property will be sold. Thereafter, the collector shall cause a notice to be published in the official journal of the parish wherein the distraint is made, specifying the property distrained, and the time and place of sale. The sale shall be held not less than fifteen calendar days from the date of the notice mailed or served on the taxpayer or the date of publication in the official journal, whichever is later. The collector may postpone such sale from time to time, if he deems it advisable, but not for a time to exceed thirty calendar days in all. If the sale is continued to a new date it shall be readvertised.

§ 1572. Surrender of property subject to distraint

Any person in possession of property or rights to property subject to distraint, upon which a levy has been made, shall, upon demand by the collector or his authorized assistants, making such levy, surrender such property or rights to the collector or his authorized assistants, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person failing or refusing to surrender any such property or rights shall be liable to the state in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes, penalties, and interest and other costs and charges which are due.

§ 1573. Sale of distrained property

The collector, or his authorized assistants, shall sell at public auction for cash to the highest bidder so much of the property distrained by him as may be sufficient to satisfy the tax, penalties, interest, and costs due. He shall give to the purchaser a certificate of sale which will be prima facie evidence of the right of the collector to make the sale, and conclusive evidence of the regularity of his proceedings in making the sale, and which will transfer to the purchaser all right, title and interest of the taxpayer in and to the property sold.

Out of the proceeds of the sale, the collector shall first pay all costs of the sale and then apply so much of the balance of the proceeds as may be necessary to pay the assessment. Any balance beyond this shall be paid to the taxpayer.

§ 1574. Collection by summary court proceeding authorized

In addition to any other procedure provided in this Subtitle or elsewhere in the laws of this state; and for the purpose of facilitating and expediting the determination and trial

of all claims for taxes, penalties, interest, attorney fees, or other costs and charges arising under this Sub-title, there is hereby provided a summary proceeding for the hearing and determination of all claims by or on behalf of the state, or by or on behalf of the collector, for taxes, excises, and licenses and for the penalties, interest, attorney fees, costs or other charges due thereon, by preference in all courts, all as follows:

(1) All such proceedings, whether original or by intervention or third opposition, or otherwise, brought by or on behalf of the state, or by or on behalf of the collector, for the determination or collection of any tax, excise, license, interest, penalty, attorney fees, costs or other charge, claimed to be due under any provision of this Sub-title, shall be summary and shall always be tried or heard by preference, in all courts, original and appellate, whether in or out of term time, and either in open court or chambers, at such time as may be fixed by the court, which shall be not less than two nor more than ten days after notice to the defendant or opposing party.

(2) All defenses, whether by exception or to the merits, made or intended to be made to any such claim, must be presented at one time and filed in the court of original jurisdiction prior to the time fixed for the hearing, and no court shall consider any defense unless so presented and filed. This provision shall be construed to deny to any court the right to extend the time for pleading defenses; and no continuance shall be granted by any court to any defendant except for legal grounds set forth in the Louisiana Code of Practice.

(3) That all matters involving any such claim shall be decided within forty-eight hours after submission, whether in term time or in vacation, and whether in the court of first instance or in an appellate court; and all judgments sustaining any such claim shall be rendered and signed the same day, and shall become final and executory on the fifth calendar day after rendition. No new trial, rehearing or devolutive appeal

shall be allowed. Suspensive appeals may be granted, but must be perfected within five calendar days from the rendition of the judgment by giving of bond, with good and solvent security, in a sum double that of the total amount of the judgment, including costs. Such appeals, whether to a court of appeals or to the Supreme Court, shall be made returnable in not more than fifteen calendar days from the rendition of the judgment.

(4) Whenever the pleadings filed on behalf of the state, or on behalf of the collector, shall be accompanied by an affidavit of the collector or of one of his assistants or representatives or of the counsel or attorney filing the same, that the facts as alleged are true to the best of the affiant's knowledge or belief, all of the facts alleged in said pleadings shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly on the defendant or opposing party.

§ 1577. Tax obligation to constitute a lien, privilege and mortgage

Except as is specifically provided in the laws regulating building and loan associations, any tax, penalty, interest or attorney fee due under the provisions of this Sub-title, shall operate as a lien, privilege and mortgage on all of the property of the tax debtor, both movable and immovable, which said lien, privilege and mortgage shall be enforceable in any court of competent jurisdiction in an action, at law, or may be enforced as otherwise provided by this Sub-title. The collector may cause notice of such lien, privilege and mortgage to be recorded at any time after the tax becomes due, whether assessed or not, and regardless of whether or not then payable, in the mortgage records of any parish wherein the collector has reason to believe the tax debtor owns property. The lien, privilege and mortgage created by this section shall affect third parties only from the date of recordation and shall take their respective ranks by virtue of recordation.

§ 1641. Criminal penalty for failing to account for state tax moneys

Any person required under this subtitle to collect, account for, or pay over any tax, penalty, or interest imposed by this subtitle, who willfully fails to collect or truthfully account for or pay over such tax, penalty, or interest, shall in addition to other penalties provided by law, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than five years, or both.

Amended by Acts 1972, No. 366, § 1.

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1595

COLONIAL PIPELINE COMPANY,

Appellant,

versus

JOSEPH N. TRAIGLE, COLLECTOR OF REVENUE,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLEE

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IN THE

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OCTOBER TERM, 1973

No. 73-1595

COLONIAL PIPELINE COMPANY,

Appellant,

versus

JOSEPH N. TRAIGLE, COLLECTOR OF REVENUE,

Appellee.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR THE APPELLEE

STATUTES INVOLVED

Acts 1914, No. 267 §23 and §24 (Now Sections 301, 302 and 315 of Title 12 of the Louisiana Revised Statutes [La. Rev. Stat.]); 12 La. Rev. Stat. §202 and §205 (Now 12 La. Rev.

Stat. §301, §302 and §315); 12 La. Rev. Stat. §301 and §302 H; 47 La. Rev. Stat. §601-§616, §1561-§1565, §1569-§1573, and §1576 are set out verbatim in the appendix attached hereto. 47 La. Rev. Stat. §401 and §1624 are set out verbatim in Appendix C of the Jurisdictional Statement.

QUESTION PRESENTED

1. Are the alternative local incidents provided in Louisiana Revised Statute 47:601, as amended by Act 325 of 1970, a sufficient basis to support a constitutional application of the Louisiana Corporation Franchise Tax upon Colonial Pipeline Company?

STATEMENT OF THE CASE

This suit arose from a dispute between the Collector of Revenue (hereinafter called Collector) and Colonial Pipeline Company (hereinafter called Colonial) concerning Colonial's 1970 and 1971 tax liability for the Louisiana Corporation Franchise Tax imposed by La. Rev. Stat. 47:601, as amended by Act 325 of 1970. (Set out verbatim in attached Appendix, p. 39-41) Pursuant to La. Rev. Stat. 47:1576 (Set out verbatim in attached Appendix, p. 65-66.) Colonial seeks refund of the taxes paid under protest.

Colonial, a foreign corporation, which voluntarily qualified to do business in Louisiana, owns and operates a petroleum pipeline system extending from Houston, Texas, through Louisiana to the New York City area. Of the total pipeline mileage owned by Colonial, approximately 258 miles are located in Louisiana. (Opinion: printed in Jurisdictional Statement, p. 26)

In addition, Colonial owns and operates pumping stations, tank farms and related facilities which are used to facilitate the interstate shipment of petroleum products through the pipeline. Colonial does not engage in any intrastate shipment of petroleum products in Louisiana; however, to maintain and operate the line and facilities, Colonial does employ approximately 25 to 30 persons in this state. (Opinion: printed in Jurisdictional Statement, p. 26)

The Collector contends that Colonial is liable for the Louisiana Corporation Franchise Tax and that the imposition of this tax upon Colonial is constitutionally permissible under the Commerce Clause, Article 1, Section 8, Clause 3, of the United States Constitution. Colonial, however, protests this imposition of the tax on the grounds that La. Rev. Stat. 47:601 as amended by Act 325 of 1970, was not intended by the Louisiana Legislature to impose a franchise tax on a corporation engaging exclusively in interstate commerce, and that if La. Rev. Stat. 47:601 does levy such a tax, then it violates the Commerce Clause of the United States Constitution.

In the case of *Colonial Pipeline Company v. Mouton*, 228 So.2d 718, writ refused 231 So.2d 393 (La. 1969), the Louisiana First Circuit Court of Appeal held that the Louisiana Corporation Franchise Tax, levied by La. Rev. Stat. 47:601 prior to its amendment by Act 325 of 1970 (Set out verbatim in Jurisdictional Statement in Appendix C, p. 51) was invalid as applied to Colonial. The court construed the pre-1970 statute to exact a tax for the privilege of engaging in business in Louisiana. Colonial was a foreign corporation doing only interstate business. Therefore, to impose the tax upon Colonial would be to exact a tax for the privilege of doing interstate business and thus, such application would violate the limita-

tions imposed by Article 1, Section 8 of the United States Constitution.

Subsequent to that decision, the Louisiana legislature amended La. Rev. Stat. 47:601 by Act 325 of 1970 and changed the operating incidence of the tax. (Opinion: printed in Jurisdictional Statement, p. 29) Disregarding the 1970 amendment, the trial court and court of appeal held that the statute in question still imposes a tax upon the privilege of doing business in the state and that since Colonial was a foreign corporation doing only interstate business in Louisiana, to impose the tax upon Colonial would be exacting a tax for the privilege of doing interstate business in violation of the Commerce Clause limitation. (A. p. 77-82; Opinion: printed in Jurisdictional Statement, p. 40-46)

The Supreme Court of Louisiana reversed the lower court's decision and held that the franchise tax is imposed upon local incidents and activities which are subject to the sovereign power of the State of Louisiana and therefore to apply the tax to Colonial would be a constitutional exercise of the State's taxing power. (Opinion: printed in Jurisdictional Statement, p. 38)

SUMMARY OF THE ARGUMENT

The constitutionality of the imposition of a state franchise upon a foreign corporation is determined by ascertaining whether or not the tax is imposed upon local incidents or activities that are subject to the sovereign power of the state.

The Supreme Court of Louisiana construed the statute in question to impose a tax upon local incidents which are subject to the sovereign power of the State and held that these incidents, under the controlling decisions of this Honorable Court, are a sufficient basis to support the constitutional application of the tax upon a foreign corporation which has voluntarily qualified to do business in the state, which is in fact exercising its charter within the state, and which owns and uses part of its capital, plant and property in the state in its corporate capacity.

The statutes as applied to Colonial taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this state, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the State.

ARGUMENT

I

THE LOUISIANA SUPREME COURT'S CONSTRUCTION OF LA. REV. STAT. 47:601 IS BINDING UPON THIS HONORABLE COURT.

Since the initiation of this suit there has been a dispute between the parties as to exactly what is the basis or operating incidence of the franchise tax in question.

La. Rev. Stat. 47:601 provides:

"§ 601. Imposition of tax

"Every domestic corporation and every foreign corporation, exercising its charter, or qualified to do business

or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. **The tax levied herein is due and payable on any one or all of the following alternative incidents:**

"(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term 'doing business' as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

"(2) The exercising of a corporation's charter or the continuance of its charter within this state.

"(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

"It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax

hereby imposed shall be in addition to all other taxes levied by any other statute.

"As used herein the term 'domestic corporation' shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term 'foreign corporation' shall mean and include all such business organizations as hereinbefore described in this paragraph which are organized under the laws of any other state, territory or district, or foreign country." (Emphasis ours) Amended by Acts 1970, No. 325, & 1, emerg. eff. July 13, 1970 at 2:15 P.M.

In the trial court, court of appeal, state Supreme Court and its briefs to this court, appellant has continuously argued that the above franchise tax is imposed solely upon "the privilege of doing interstate business as applied to appellant." However, the Louisiana Supreme Court considered and disagreed with Colonial's argument and held that the operating incidents of the tax was other than the mere "privilege of doing business" in the state. The Supreme Court construed the statue in the following manner:

"The Court of Appeal holding as it did in the earlier opinion that the statute (prior to the 1970 amendment) as applied to Colonial's activities within the State violated the commerce clause of the United States Constitution, rested the decision essentially upon its construction that the statute imposed a tax simply upon the privilege of doing business in the State of Louisiana. And, of course, State franchise or excise imposed on a corporation for the privilege of doing exclusively interstate business, as a general rule, are invalid.

"Colonial argues, and the Court of Appeal in the case presently before us held, that the 1970 amendment to R.S. 47:601 did not change the operating incidents of the franchise tax, that the statute before and after the amendment in this respect is essentially the same.

"We disagree. The amended statute omits the primary operating incident, i.e., 'the privilege of carrying on or doing business.' And, of course, it was the taxing of the privilege of carrying on or doing business which the Court of Appeal in its earlier decision held was the exclusive thrust of the statute. Additionally the amendment specifies three alternative incidents, one of which, 'the doing of business within this state in a corporate form,' was not clearly incorporated in the prior statute. (Jurisdictional Statement, p. 29-30)

• • •

"The statute as amended in 1970 imposes a corporation franchise tax upon, pertinently, every foreign corporation (and every domestic corporation as well) exercising its charter, authorized to do or doing business, or owning or using any part or all of its capital or plant, in the State of Louisiana. The tax is due and payable on any one or all of three alternative incidents:

"a) doing business in Louisiana in a corporate form

"b) the exercising of a corporation's charter or the continuance of its charter within the state and

"c) the owning or using any part or all of its capital, plant or other property in Louisiana in a corporate capacity.

"The thrust of the statute is to tax not the interstate business done in Louisiana by a foreign corporation, but

the doing of business in Louisiana in a corporate form, including

> " 'each and every act, power, right, privilege or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations . . .'

(Jurisdictional Statement, p. 30-31).

• • •

"Louisiana's corporation franchise tax statute, as amended by Act 325 of 1970, and as applied to foreign corporations doing only interstate business in Louisiana, taxes not the general privilege of doing interstate business but simply the corporation's privilege of enjoying in a corporate capacity the ownership or use of its capital, plant or other property in this state, the corporation's privilege of exercising and continuing its corporate charter in the State of Louisiana, and the corporation's use of its corporate form to do business in the State.

"The corporation, including the foreign corporation doing only interstate business in Louisiana, enjoys under our laws many privileges separate and apart from simply doing business, such for instance as the legal status to sue and be sued in the Courts of our State, continuity of business without interruption by death or dissolution, transfer of property interests by the disposition of shares of stock, advantages of business controlled and managed by corporate directors, and the general absence of individual liability, among others.

"That the corporation enjoys power and privileges not possessed by individuals or partnerships was long ago recognized by this Court. *Conway v. Lane Cotton Mills*

Co., 178 La. 626, 152 So. 312 (1933)." Jurisdictional Statement, p. 37-38).

Thus, the Supreme Court of Louisiana expressly held as a matter of state law that the statute in question imposes the franchise tax upon the above enumerated alternative operating incidents and not, as appellant contends, upon the "privilege of doing interstate business" in the state.

It is respectfully submitted that the well settled principle of constitutional law, that the construction of state law by the highest state court is binding upon this Honorable Court, is applicable in this case. The arguments and issues were clearly presented to the Supreme Court of Louisiana and the court's holding was express and unambiguous in its construction of the statute in question. See *Memphis Natural Gas Company v. Stone*, 335 U. S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948); *Ersenstadt v. Baird*, 405 U. S. 438, 92 S.Ct. 1029, 31 L.Ed. 2d 349 (1972); *Groppi v. Wisconsin*, 400 U. S. 505, 91 S.Ct. 490, 27 L.Ed. 2d 1971).

ARGUMENT

II

THE ALTERNATIVE LOCAL INCIDENTS PROVIDED IN LA. REV. STAT. 47:601, AS AMENDED BY ACT 325 OF 1970, ARE A SUFFICIENT BASIS TO SUPPORT A CONSTITUTIONAL APPLICATION OF THE LOUISIANA CORPORATION FRANCHISE TAX UPON COLONIAL.

This court has long recognized that a nondiscriminating, properly apportioned corporate franchise tax may be imposed upon foreign corporations when the tax is imposed upon local

incidents that provide a taxable nexus with the state. All that is constitutionally required is that the state impose the tax upon some incident which is subject to the sovereign power of the state. *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602, 71 S.Ct. 508, 95 L.Ed. 573 (1951); *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948); *General Motors Corp. v. Washington*, 377 U. S. 436, 84 S.Ct. 1564, 12 L.Ed. 2d 430 (1964).

In the *Spector* case *supra*, this Honorable Court held that the State of Connecticut could not impose a franchise tax solely for the privilege of doing interstate business. However, as noted in that case and subsequent cases, this prohibition does not preclude state taxation of other aspects of the interstate business. In the *Spector* case, *supra*, this Court stated at 95 L.Ed. 573, 578:

> "The answer in the instant case has been made clear by the courts of Connecticut. It is not a matter of labels. **The incidence of the tax provides the answer.** The courts of Connecticut have held that the tax before us attaches **solely** to the franchise of petitioner to do interstate business. **The State is not precluded from imposing taxes upon other activities or aspects of this business which, unlike the privilege of doing interstate business, are subject to the sovereign power of the State.** Those taxes may be imposed although their payment may come out of funds derived from petitioner's interstate business, provided the taxes are so imposed that their burden will be reasonably related to the powers of the State and non-discriminatory." (Emphasis added)

In *General Motors Corp.* case, *supra*, this Honorable Court stated at 377 U. S. 436, 447, 12 L.Ed. 2d 430, 438:

"It is beyond dispute, we said in *Northwestern States Portland Cement Co. v. Minnesota, supra*, 358 U. S. at 458, 3 L.Ed. 2d at 427, 'that a State may not lay a tax on the "privilege" of engaging in interstate commerce.' But that is not this case. **To so contend here is to overlook a long line of cases of this Court holding that an instate activity may be a sufficient local incident upon which a tax may be based.** As was said in *Spector Motor Service, Inc. v. O'Connor*, 340 U. S. 602, 609, 95 L.Ed. 573, 578, 71 S.Ct. 508 (1951), **'the state is not precluded from imposing taxes upon other activities or aspects of this (interstate) business**, which, unlike the privilege of doing interstate business, are subject to the sovereign power of the state.' This is exactly what Washington seeks to do here • • •." (Emphasis added)

In *Memphis Natural Gas Company v. Stone*, 335 U. S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948), the facts are almost identical to the case at bar. The gas company piped gas across the State of Mississippi. **It did no intrastate business in that State.** It had no office in that state and no employees other than those necessary to maintain the pipeline. **The company was not qualified to do business in Mississippi.** The Mississippi tax statute in question was a franchise or excise tax very similar to our Louisiana statute. The pertinent part of the Mississippi statute stated:

"• • • It being the purpose of this section to require the payment to the State of Mississippi, this tax for the right granted by the laws of state to exist as such organization, and enjoy, under the protection of the laws of this state, the powers, rights, privileges and immunities derived from the state by the form of such existence."

The Supreme Court of Mississippi concluded the statute

did not attempt to tax interstate commerce. The Court, at 29 So.2d 268; 270; said:

"It is to be seen that **there is no attempt to tax interstate commerce as such, but that levy is an exaction which the state requires as a recompense for the protection of lawful activities carried on in this State by the corporation, foreign** or **domestic, activities which are incidental to the powers and privileges possessed by it by the nature of its organization *** here the local activities in maintaining, keeping in repair and otherwise in manning the facilities of the system throughout the one hundred thirty-five miles of its lines in this State.**" (Emphasis added)

In affirming the Supreme Court of Mississippi, this Court said at 335 U. S. 80, 96; 92 L.Ed. 1832, 1844.

"We think that the State is within its constitutional rights in exacting compensation under this statute for the protection it affords the activities within its border. **Of course, the interstate commerce cannot be conducted without these local activities. But that fact is not conclusive. These are events apart from the flow of commerce.** This is a tax on activities from which the State, not the United States gives protection and the State is entitled to compensation when its tax cannot be said to be an unreasonable burden or a toll on the interstate business." (Emphasis added)

Since the state may not exact a tax for the privilege of doing interstate business but yet it can constitutionally tax other aspects and activities of this business, the crucial issue becomes one of deciding where to draw the line that establishes the boundary between the permissible area of state taxation and the prohibiting limitation of the Commerce

Clause. As stated in the *Spector* case, *supra*, **"The incidence of the tax provides the answer."** Accord, *General Motors Corp. v. Washington*, 377 U. S. 436, 12 L.Ed. 2d 430, 84 C.St. 1564 (1964).

The question is one of deciding if the operating incidence of the tax is on some local incident which is reasonably related to the powers of the state and is nondiscriminatory. But what will provide a local incident? This Court answered this in *General Motors Corp. v. Washington, supra*, wherein it stated at 377 U. S. 436, 441, 12 L.Ed. 2d 430, 435:

> "• • • •. As was said in *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, 444, 85 L.Ed. 267, 270, 61 S.Ct. 246, 130 ALR 1229 (1940), "the simple but controlling question is **whether the state has given anything for which it can ask return."** (Emphasis added)

As shown in our prior argument, the Supreme Court of Louisiana held that the operating incidents of the franchise tax in question are the alternative incidents provided in La. Rev. Stat. 47:601. The trial court found as a matter of fact that Colonial is subject to the tax on the basis of all three incidents. Colonial has voluntarily qualified with the Secretary of State to do business in Louisiana in the corporate form, it is in fact doing business in this state in the corporate form, and it owns and is using part of its capital and property in Louisiana in the corporate capacity. (A. 79-80)

Are these incidents a sufficient basis to support a constitutional application of this franchise tax upon Colonial? Has the State of Louisiana given anything for which it can ask

return? The Supreme Court of Louisiana held the State has given something for which it can ask return. The Court stated:

> "The fact that the corporate form of doing business is inextricably interwoven in a foreign corporation's doing interstate business in the State, does not in our view detract from the fact that the local incident taxed is for the form of doing business rather than the business done by that corporation. And it is our view that the local incident is real and sufficiently distinguishable, so that taxation thereof does not, under the controlling decisions of the United States Supreme Court, violate the Commerce Clause.
>
> "The statute does not discriminate between foreign and local corporations, being applicable, as it is, to both. Nor do we believe that the State's exercise of its power by this taxing statute is out of proportion to Colonial's activities within the state and their consequent enjoyment of the opportunities and protection which the state has afforded them.
>
> "Furthermore we believe that the State has given something for which it can ask return. The return, tax levy in this case, is an exaction which the State of Louisiana requires as a recompense for its protection of lawful activities carried on in this state by Colonial, activities which are incidental to the powers and privileges possessed by it by the nature of its organization, here, as in *Memphis Natural Gas*, the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of their pipeline system throughout the 258 miles of its pipeline in the State of Louisiana." (Opinion: printed in Jurisdictional Statement, p. 38)

This Honorable Court and several of the other highest state courts have considered almost identical questions and in

every case, the courts have held that the imposition of a franchise tax upon such local incidents is a constitutionally valid application of the state's taxing power.

In *Memphis Natural Gas Co. v. Stone*, 335 U. S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948), the franchise tax was imposed upon the corporate existence in Mississippi and the local incidents that were seized upon to sustain the application of the tax upon the foreign corporation doing only interstate business in the state was the "maintaining, keeping in repair, and otherwise in manning the facilities used in the interstate commerce" even though those activities were necessary to conduct the interstate commerce.

In *Texas Gas Transmission Corp. v. Atkins*, 197 Tenn. 123, 270 S.W. 2d 384 (1954); certiorari denied, 348 U. S. 883, 75 S.Ct. 125, 99 L.Ed. 694, the court considered the specific arguments presented in the instant case. Texas Gas, a Delaware corporation, was an interstate pipeline carrier which had qualified to do business in Tennessee. However, **the Court found that Texas Gas engaged in exclusively interstate business in Tennessee.** The legal question involved was whether the excise taxes were validly levied and collected. Texas Gas argued that the *Spector* case, *supra*, was controlling and that the taxes were therefore not valid. The Tennessee Supreme Court in rejecting this argument stated at 270 S.W. 2d 384, 386:

> "It is our conclusion that the crux of the Spector case is that the Supreme Court accepted as its basic predicate the construction placed upon the statute involved by the highest court of Connecticut, which held that the tax was levied upon the right to **do interstate business. The right to do business in the corporate form was not**

> **involved in the case . . . The Tennessee franchise tax, however, is imposed upon the privilege of engaging in business in corporate form in this State."** (Emphasis ours)

In *Mid-Valley Pipeline Co. v. King*, 221 Tenn. 724, 431 S.W.2d 277 (1968), appeal dismissed, 393 U.S. 321, 89 S.Ct. 556, 21 L.Ed. 2d 517 (1969), the Tennessee Court, in its opinion, stated at 431 S.W.2d 277, 280:

> "The franchise and excise taxes are upon **the privilege of engaging in business in corporate form in Tennessee, and not merely on the doing of business.** *Texas Gas Transmission Corporation v. Atkins*, 197 Tenn. 123, 270 S.W. 2d 384 (1954), certiorari denied 343 U.S. 883, 75 S.Ct. 125, 99 L.Ed. 694; *Texas Gas Transmission Corporation v. Atkins*, 205 Tenn. 495, 327 S.W. 2d 305 (1959).
>
> "Foreign corporations, doing business in this State without domesticating or qualifying to do business in Tennessee, shall, as a recompense for the protection of their local activities and as compensation for the benefits they receive from doing business in Tennessee, pay franchise and excise taxes. T.C.A. Sections 67-2701 and 67-2902; *Texas Gas Transmission Corporation v. Atkins*, 205 Tenn. 495, 327 S.W. 2d 305, supra.
>
> **The fact complainant is and has been solely engaged in interstate commerce within this State is not determinative.** *Texas Gas Transmission Corporation v. Atkins*, 205 Tenn. 495, 327 S.W. 2d 305, supra."

And at Page 282 stated:

> "The record in the instant case clearly shows complainant has and is employing or owning capital or property in this State and exercising its corporate franchise

within the State. It maintains its right-of-way and other valuable properties located in this State **in its corporate capacity.** It has and is using our courts to vindicate its rights.

"Such local activities, although incidental to the conduct of interstate commerce, are taxable under the foregoing authorities." (Emphasis ours)

In *Great Lakes Pipeline Co. v. Oklahoma Tax Commission*, 231 P.2d 655 (Okla. 1951), the Oklahoma Supreme Court held that a license levied upon a foreign corporation for the privilege of existing and exercising its corporate functions in that state was valid, since the purpose of the statute in question was to tax the foreign corporation for the privilege of existing in the corporate form and exercising its corporate functions in Oklahoma.

In *Roadway Express, Inc. v. Director, Division of Tax*, 50 N.J. 471, 236 A.2d 577 (1967), appeal dismissed, 390 U.S. 745, 88 S.Ct. 1443, 20 L.Ed. 2d 276(1968), the Court upheld a state franchise tax, although Roadway was **doing exclusively interstate** business in New Jersey. In upholding the tax, the Supreme Court of New Jersey analyzed the decision in the case of *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573 (1951), in the light of the later decisions of the United States Supreme Court in *Railway Express Agency v. Virginia*, 358 U.S. 434, 79 S.Ct. 411, 3 L.Ed. 2d 450 (1959); *Northwestern State Portland Cement Company v. Minnesota*, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed. 2d 421, (1959); and in *General Motors Corporation v. Washington*, 377 U.S. 436, 84 S.Ct. 1564, 12 L.Ed. 2d 430 (1964), and then said:

"It remains established that a tax on an exclusively interstate business verbally based solely on the privilege of doing such business in the State is constitutionally forbidden. We therefore construe that basis of New Jersey's tax to be inapplicable to taxpayers like those involved here. Since a tax may not exclude such corporation from doing such business within it, it may not exact an impost on the thesis of a condition of entry therein. More technically speaking, it is our view that the New Jersey tax is validly applicable to these taxpayers on the foundation of other basis expressed in the statute. The first is that the tax is expressly in lieu of 'all other state, county or local taxation upon or measured by intangible personal property' of a foreign corporation, which kind of a tax we conceive could be validly imposed on a corporate entity of another state conducting an exclusively interstate business here. **We believe the tax is additionally sustainable as a levy 'for the privilege of *** employing or owning capital or property, or maintaining an office, in this State,' if not also 'for the privilege of * * * exercising its corporate franchise' here. We think such privileges are sufficiently different from that of 'doing interstate business so that they are, in the sense stated in Spector, aspects of such business subject to the sovereign power of the state."** (Emphasis added)

In *Southern National Gas Corp. v. Alabama*, 301 U.S. 148, 57 S.Ct. 695, 81 L.Ed. 970 (1937) this Honorable Court stated at 81 L.Ed. 970, 974:

"The statute, which is challenged as here applied, was under consideration in *Anglo-Chilean Nitrate Sales Corp. v. Alabama*, 288 U.S. 218, 77 L.Ed 719, 53 S.Ct. 373. In the light of the decisions of the Supreme Court of the State, this Court concluded that the tax was laid 'not upon the authorization, right or privilege to do business in Alabama, but upon the actual doing of business.' Id. p.

223. The tax was held invalid as applied to a foreign corporation whose sole business in the State consisted in the landing, storage and sale in the original packages, of goods imported from abroad. In the instant case the Supreme Court of the State has reviewed its rulings and has expounded the meaning of the statute. **The state court holds that the tax is a franchise tax levied 'on foreign corporations as a prerogative to the right to exercise of its corporate functions in the State.' It 'is not on any basis a tax on business' but is laid 'on the exercise of corporate functions, or on the privilege of exercising corporate functions within the State and its employment of its capital in Alabama.'**

"By compliance with the statute appellant obtained the privilege of engaging within the State in any of the activities which its charter authorized." (Emphasis added)

It can be seen from the above quoted language that the Court approved the new construction of the Alabama statute and held that a state could impose the tax for the "privilege of doing an intrastate business and not only on the actual doing of such business.

In *Stone v. Interstate Natural Gas Co.*, 103 F.2d 544 (5th cir. 1939), affirmed per curiam 308 U.S. 522, 60 S.Ct. 292, 84 L.Ed. 442 (1940), the Court had the same Mississippi statute before it that was later considered in *Memphis Natural Gas Co. v. Stone, supra.* The taxpayer was an interstate gas pipeline company which engaged solely in the transportation of gas in interstate commerce. **It engaged in no intrastate business, but had qualified under the state law** and the state sought to impose a franchise tax on it. The Court in the course of its opinion stated at 103 F.2d 544, 548:

"• • •. The Act of 1934 does not confine itself to corporation but (Sect. 1) extends to associations, joint stock companies and 'every form of organization for pecuniary gain, having capital stock represented by shares, • • • **having privileges not possessed by individuals or partnerships.**' • • • (' "Doing business" • • • shall mean and include each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of the powers and privileges acquired by the nature of such organization.') There is imposed (Sect. 2) an annual 'franchise tax or excise tax' upon each such organization existing in this State or hereafter organized under its laws. The same tax (Sect. 3) is then imposed on every such organization organized and existing by virtue of the laws of some other State or country 'now, or hereafter doing business within this state, as hereinbefore defined.' As to each class of organizations the tax is $1 per thousand dollars of 'capital used, invested or employed • • • within this state,' and it is explained that the tax is required in the case of domestic organizations 'for the right granted by the laws of this state to exist as such organization, and enjoy, under the protection of the laws • • • the powers, rights, privileges,' etc., Section 2, and in the case of foreign organizations for 'the benefit and protection of the government and laws of the state' received by the capital which measures the tax. Section 3. Payment of the tax is made a condition precedent to the continued existence of domestic organizations and 'to the right to continue business in this state, if not organized under the laws of Mississippi.'

"• • •

"• • •. In order to treat the foreign organization in as nearly the same manner as possible, the tax is applied to it so soon as it 'does business' in the State. Under the common and natural meaning of these words a commer-

cial activity would be understood, but the Legislature assigns a very artificial meaning to them, which includes not only any and every corporate act, **but the exercise or enjoyment in the State of any power or privilege acquired by virtue of being so organized. The privilege and power of a corporation to sue and be sued, or even to acquire and hold property as such are included. When this Gas Company, though it did not domesticate, filed its charter and appointed its agent for service in order to qualify for doing business in the old sense, it began the enjoyment in Mississippi of a privilege incident to its corporate organization, it began to 'do business' in the new and artificial sense.** (Emphasis added)

"• • •

"• • •, a foreign corporation formed for profit is doing business in Mississippi and is taxable as soon as it gets ready to be active by having property there and enjoying the protection of the State for it, and qualifies formally by filing its charter and naming its agent for process service. These latter acts clearly mark its appearance in the State. Thus both foreign and domestic corporations, though intending to do and actually doing no active business in the common sense except what is foreign or interstate commerce, are taxed, but are not taxed because they carry on such commerce."

"• • •

And at 103 Fed.2d 544, 549:

"• • •. **The charter which the Gas Company filed and obtained the right to enjoy in Mississippi grants to it power to do much more than to engage in the interstate transportation of gas and oil.** The Gas Company could also have mined, bored for and refined gas, oil and other

minerals in Mississippi, and transported and sold them within the State. It could have acquired, held and sold stock in other corporations there, voting the stock and controlling the corporations, and could have acquired, held and sold real estate and personal property of every description, all by the express terms of its charter. **This franchise or privilege tax is not escaped because the Gas Company chose only to transport and sell gas interstate. It owes no more tax because it did that.** Therefore that activity is not taxed." (Emphasis added)

The Court then went on to conclude that the tax was valid and could be imposed on the corporation.

In *Memphis Natural Gas Co. v. Stone*, 335 U.S. 80, 68 S.Ct. 1475, 92 L.Ed. 1832 (1948), this Honorable Court considered the legal significance of imposing a franchise tax on the incidence of qualifying to do intrastate business. The Court, at 335 U.S. 80, 92; 92 L.Ed. 1832, 1842, stated:

"On the other hand, in *Interstate Natural Gas Co. v. Stone*, 308 U.S. 522, 84 L.Ed. 442, 60 S.Ct. 292, we affirmed per curiam a judgment of the Fifth Circuit in *Stone v. Interstate Natural Gas Co.*, 103 F.2d 544, on the authority of *Southern Natural Gas Corp. v. Alabama*, supra. (301 U.S. at 153, 156, 157, 81 L.Ed. 974-967, 57 S.Ct. 696). The tax in question in the 308 U.S. case was exacted by the same Mississippi statute employed here. This differs from the Mississippi statute in the Interstate case in 284 U.S. The Interstate Case in 308 U.S. differed from this present case, so far as is material, only in the fact that the foreign corporation filed a copy of its charter as a prerequisite to doing business in Mississippi and **appointed an agent for the service of process. The page references in the Stone citation of the Southern Gas Case show that this Court considered the Mississippi tax in**

the Stone case as one not on business but 'on the privilege of exercising corporate functions within the State and its employment of its capital in (Mississippi).' Southern Gas Corp. v. Alabama, supra (301, U.S. 153, 81 L.Ed. 974, 57 S.Ct. 696). **In the Southern Gas Case, p. 155, the company did intrastate business but in the Stone Case, no intrastate business was done. Thus the local event of qualifying for intrastate business, which occurred in both Southern Gas and Stone, brought a different result from that in the Ozark Case and in Interstate, 284 U.S., where the privilege or right to do interstate business was protected."** (Emphasis added)

Further support for this position is found in *Wisconsin & Michigan Steamship Company v. Corporation and Securities Commission*, 371 Mich. 61, 123 N.W. 2d 258 (1963), writs denied, 375 U.S. 912, 84 S.Ct. 668 (1964), 11 L.Ed. 2d 610. Petition for rehearing denied 376 U.S. 966, 84 S.Ct. 1123 (1964), 11 L.Ed.2d 984, wherein the Michigan Supreme Court held that the appellant Steamship company, **a foreign corporation which engaged solely in interstate commerce in Michigan, but which had voluntarily qualified to do intrastate business in Michigan, was liable for the state's franchise tax irrespective of whether the corporation actually exercises the privilege or not.** The court stated at 123 N.W.2d 258, 261:

"It is not the privilege to do interstate business in Michigan for which appellant applied to the State and for the grant of which the State seeks to charge it an annual fee. Its right to engage in such interstate business in Michigan is not subject to the State's grant or denial. **Appellant sought, and was granted the privilege to do intrastate business in Michigan. Whether or not appellant actually exercised its corporate franchises in Michigan in**

the conduct of intrastate business, it was granted the privilege to do so, upon its own application, and, so, must pay." (Emphasis added)

It is agreed that the Commerce Clause precludes the states from requiring that foreign corporations procure a certificate of authority and pay excise or license taxes as a condition precedent to doing interstate business in that state and the State of Louisiana does not attempt to do so. However, in its brief to this Court, Appellant repeatedly asserts that the Louisiana Corporation Franchise Tax is a license tax, the payment of which is a condition precedent to doing interstate commerce in Louisiana. It should be noted that Colonial cites no Louisiana law or jurisprudence in support of these contentions. A mere reading of the Louisiana Corporation Franchise Tax Law (La. Rev. Stat. 47:601-616) (Set out verbatim in attached Appendix, p. 39-59) and the Louisiana Foreign Corporation Law (La. Rev. Stat. 12:301-302) (Set out in attached Appendix, p. 33-34) clearly shows that there are no such requirements or provisions to support Colonial's statements and the Louisiana court decisions are explicit on this point.

La. Rev. Stat. 12:301 requires that foreign corporations obtain a certificate of authority from the Secretary of State before it shall have the right to transact local business in Louisiana. The following section, La. Rev. Stat. 12:302 H specifically exempts corporations transacting business in interstate or foreign commerce from this requirement. Taken together, these statutes clearly show that a certificate of authority is only necessary if the foreign corporation desires to transact intrastate business. If the corporation carries on only interstate business in Louisiana, the certificate of

authority is not required. Although these statutes were enacted subsequent to Colonial's qualification in 1962, the Louisiana law in 1962 was to the same effect. La. Rev. Stat. 12:202 (Set out verbatim in attached Appendix, p. 34-36) required foreign corporations to qualify with the Secretary of State as a condition precedent of being authorized to do local business in the state. However, La. Rev. Stat.. 12:205 (Set out verbatim in attached Appendix, p. 37-39) specifically excluded foreign corporations engaging exclusively in foreign or interstate commerce from enforcement of the qualification requirement. The source provision for this statute, Acts 1914, No. 267, Section 24 (Set out verbatim in attached Appendix, p. 39) expressly provides the same exemptions.

The Louisiana courts have long recognized this exemption from the state qualification requirements. In *Graham Mfg. Co. v. Rolland*, 191 La. 757, 186 So. 93 (1939), the Supreme Court of Louisiana invoked this exception provision and held that the State could not require that a foreign corporation engaging exclusively in interstate commerce obtain a certificate of authority from the Secretary of State as a condition precedent to doing business in the state. The Court at 186 So. 93, 94, stated: "This proviso would go without saying." Accord, *State v. American Railway Express Co.*, 159 La. 1001, 106 So. 544 (1925).

We respectfully submit that these statutes and cases affirmatively show that Louisiana does not impose a license or franchise tax as a condition precedent to doing interstate business in this state nor does the state attempt to do so. Colonial voluntarily qualified under the provision of La. Rev. Stat. 12:202 (Jurisdictional Statement, p. 26) to do business in Louisiana and when it did Colonial became authorized to exercise the same powers, rights, and privileges accorded

similar domestic corporations. (Opinion: printed in Jurisdictional Statement, p. 26)

La. Rev. Stat. 47:601 expressly provides that the purpose of the tax is to require payment to the State of Louisiana by domestic corporations for the right granted by the laws of the state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of the state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. State law grants these privileges to domestic corporations. Due to this, the State can exact a corporation franchise tax, because the state has given benefits for which it can seek compensation. Likewise, it is state law which grants these same powers, rights, privileges and immunities to foreign corporations which choose to qualify to do business in the state in corporate form or which choose to exercise its charter within the state or which choose to own or use part or all of its capital, plant or other property in the state in the corporate capacity. Just as with domestic corporations, the state is giving benefits for which it can ask a return and the extent of use of these privileges is immaterial.

In Part III of its brief to this Court, Appellant asserts that the collection procedures for the franchise tax in question authorize a complete cessation of the interstate business which makes the tax equivalent of a state license to engage in interstate commerce.

In support of this last mentioned contention, Colonial states at page 22 of its brief: "Section 401 of the Louisiana law provides that failure to pay the tax authorizes the Collector to rule the taxpayer into court to show cause why he should not be ordered to cease 'further pursuit of the business

taxed.'" (La. Rev. Stat. 47:401 is set out in Jurisdictional Statement, p. 51)

In making the above quoted statement, the Appellant has made a grossly misleading statement of the law. La. Rev. Stat. 47:401 is a part of Chapter 3 of Sub-Title II of Title 47 of the Louisiana Revised Statutes and Chapter 3 (La. Rev. Stat. 47:341-405) deals exclusively with the Louisiana Occupational License Tax, and has nothing whatsoever to do with the Louisiana Corporation Franchise Tax. By its own terms, La. Rev. Stat. 47:401 applies only to "the tax levied by this chapter," that is, the Louisiana Occupational License Tax.

Colonial next contends that if it had not paid the franchise tax, it could have been found guilty of a felony pursuant to La. Rev. Stat. 47:1641. (La. Rev. Stat. 47:1641 is set out in the Jurisdictional Statement, p. 60) Appellee submits that the express provisions of La. Rev. Stat. 47:1641 clearly show that the statute does not apply to a taxpayer such as Colonial. **The statute only applies to an agent of the state who collects a tax from a taxpayer and then fails to remit or account for such money to the state.** In the case of *State v. Leon S. Poirier*, No. 87,832; 87,833; 87,838, the 19th Judicial District Court of Louisiana explicitly held that the statute only applies to an agent of the state (Opinion in attached Appendix, p. 67-69). In that case, the court sustained a motion to quash the charges against the defendant on the grounds that he was not an agent of the state for the collection of the taxes involved therein. The Supreme Court of Louisiana expressly affirmed this ruling in denying the state's application for writs. The Court, at 260 La. 452, 256 So.2d 440 (1972), and 260 La. 600, 256 So.2d 640 (1972), held that the ruling of the district court was correct. (Opinion in attached Appendix, p. 70-71)

Colonial next contends that had it not paid the franchise tax in question, the state, pursuant to La. Rev. Stat. 47:1570-1573 (Set out verbatim in attached Appendix, p. 63-65), could within 15 days have sold at public auction enough of Colonial's interstate facilities to pay the tax. Appellee submits that this assertion is totally without foundation in law or fact. Pursuant to La. Rev. Stat. 47:1569 (Set out in attached Appendix, p. 63), the Collector can use the procedure of distraint only after the tax has been finally assessed as provided in La. Rev. Stat. 1561-1565. (Attached Appendix, p. 59-63) These provisions provide the taxpayer with the right to appeal the assessment to the courts by either paying the tax under protest and filing suit for refund in a court of law, as was done in the present case (See La. Rev. Stat. 47:1576 in attached Appendix, p. 65-66), or by first appealing to the Louisiana Board of Tax Appeals without payment and then proceeding to a court of law.

Contrary to the Appellant's assertions, the foregoing statutes, and cases construing them, clearly show that the Louisiana Corporation Franchise Tax and the Louisiana tax collection procedures are in no way similar to the ordinance involved in *Ideal Cement Co. v. United Gas Pipe Line*, 282 F.2d 574 (5th Cir. 1960), cert. denied, 369 U.S. 837, 82 S.Ct. 863, 7 L.Ed.2d 842 (1962), or to the state tax involved in *Crutcher v. Kentucky*, 141 U.S. 47, 11 S.Ct. 851, 35 L.Ed. 649 (1891).

In fact, Appellant's contentions completely ignore the Louisiana Supreme Court's holding in this case that the franchise tax at issue is imposed solely upon the alternative incidents provided in La. Rev. Stat. 47:601. Additionally, Appellant's erroneous assertions concerning the applicability and

use of the Louisiana tax collection provisions merely confuses the sole and only issue before this Honorable Court.

As we previously stated, the only question presented to this Court is whether or not the incidents provided in La. Rev. Stat. 47:601 are a sufficient basis to support a constitutional application of the franchise tax upon Colonial. The Supreme Court of Louisiana held that the incidents are a sufficient basis and we respectfully submit that the prior decisions of this Court clearly show that the Louisiana Supreme Court decision is correct and should be affirmed.

CONCLUSION

It is submitted that the imposition of the Louisiana Corporation Franchise Tax upon Colonial Pipeline Company is a constitutional application of the tax.

Wherefore Appellee respectfully urges and prays that this Court affirm the judgment of the Supreme Court of Louisiana and grant Appellee judgment against Colonial in the amount of $69,894.78.

Respectfully submitted,

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Attorneys for Appellee

PROOF OF SERVICE

The undersigned, attorney for Joseph N. Traigle, successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the ____ day of August, 1974, I served a copy of the foregoing brief on Colonial Pipeline Company, plaintiff-appellant herein, by mailing a copy of the same in an addressed envelope with postage prepaid to its counsel of record, R. Gordon Kean, Jr., of Sanders, Miller, Downing & Kean, Post Office Box 1588, Baton Rouge, Louisiana 70821.

Baton Rouge, Louisiana, this ____ day of August, 1974.

CHAPMAN L. SANFORD and
WHIT M. COOK, II

APPENDIX

The following sections of Title 12 of the Louisiana Revised Statutes are involved in this case:

§ 301. Conditions precedent to transacting business

No foreign corporation, except one which has before January 1, 1969 been granted a certificate of authority to do business in this state which is still valid, shall have the right to transact business in this state until it shall have procured a certificate of authority to do so from the Secretary of State. No foreign corporation shall be entitled to procure such a certificate of authority to transact in this state any business which a corporation organized under Chapter 1 or 2 of this Title is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized, governing its organization and internal affairs, differ from the laws of this state.

Acts 1968, No. 105, § 1.

§ 302. Acts not considered transacting business

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purpose of being required to procure a certificate of authority pursuant to R.S. 12:301, by reason of carrying on in this state any one or more of the following activities:

A. Maintaining or defending any action or suit, or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

B. Holding meetings of its directors or shareholders, or carrying on other activities concerning its internal affairs.

C. Maintaining bank accounts.

D. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

E. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, if such orders require acceptance outside this state before becoming binding contracts.

F. Creating evidence of debt, mortgages or liens.

G. Securing or collecting debts or enforcing any rights in property securing the same.

H. Transacting any business in interstate or foreign commerce.

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The following sections of former Title 12 of the Louisiana Revised Statutes were effective at the time Colonial qualified to do business in Louisiana and are involved in this case:

§ 202. Documents to be filed with Secretary of State; agent for service of process; limited certificate of authority

A. As a condition precedent to being authorized to do business in this state, every corporation, except corporations engaged in the business of insurance in all its forms, shall file with the Secretary of State the following documents:

1. A written declaration stating its domicile, the place in the state where it intends to do or is doing business, the

intended place or the actual place of its principal business establishment in this state and outside of this state, and the name and address (including street and number, if any) of its agent in this state upon whom process may be served.

2. A written power of attorney appointing the agent upon whom process may be served. Such agent may be an individual who is a resident of this state, or a corporation authorized to transact business in this state and authorized by its charter to act as the agent of a corporation for service of process. Before any corporation may be appointed the agent upon whom process may be served, it shall file with the Secretary of State a certificate setting forth the names of at least two individuals at its address as set forth in the declaration filed pursuant to paragraph 1 of this Subsection, each of whom is authorized to receive any process served on it as such agent, and the corporation may by filing an amended certificate substitute or add the names of other individuals.

3. A certified copy of a resolution of the board of directors of the foreign corporation. This resolution, which shall accompany the power of attorney required by paragraph 2 of this Subsection shall agree that any lawful process against the corporation which is served upon the agent shall be a valid service upon the corporation. This authority shall continue in force and be maintained as long as any liability growing out of or connected with the business done by the corporation in this state remains outstanding against the corporation.

4. A certified copy of its articles of incorporation, together with a certified copy of its certificate of incorporation. Subsequent modification of the articles or certificate of incorporation shall be filed as provided herein. Until filed, they shall be ineffective in this state. As amended Acts 1950, No. 316, § 2; Acts 1954, No. 25, § 1.

B. If the corporation intends to engage or is engaged in

a business in this state which will subject it to liability for state severance taxes, the corporation shall file, in addition to the documents required in Sub-section A, a written declaration of the place in this state where the severance accounts will be maintained.

C. Copies of documents on file with the Secretary of State, certified by him shall be prima facie evidence of due incorporation and of authority to do business in this state.

D. In the event that a foreign corporation desiring to qualify to do business within the State of Louisiana shall not desire to exercise all of the powers granted to it under its existing charter, or in the event under the laws of the State of Louisiana said foreign corporation shall be forbidden or prevented from exercising some of the powers granted to it under its existing charter, or in the event such corporation shall be prevented for any reason from exercising the principal or primary business within the State of Louisiana for which it is organized within the state of its incorporation, but shall desire to exercise some but not all of the powers granted to it under its existing charter, then and in any such event such corporation desiring so to qualify within the State of Louisiana for limited purposes shall append to the written declaration required in Sub-section A, paragraph 1 of this Section, a certified copy of a resolution of its board of directors, trustees, or other governing body, setting forth briefly the nature of the business it intends to undertake within the State of Louisiana or the corporate powers to be exercised within the State of Louisiana, and upon the filing of such certified resolutions, together with the other documents required by this Section, the Secretary of State shall append to or inscribe upon the face of the certificate of authority to do business provided in R.S. 12:203, a statement setting forth the type or kind of business which said foreign corporation is authorized to pursue in this state, or the powers of said corporation's charter which may be exercised within this state, and upon the issuance of such limited certificate of authority to do business, said corporation shall be fully authorized and empowered to carry on such limited business or to exercise such limited powers as are set forth in said certificate and no more, provided, however, that limited qualification under the terms of this Subsection shall not limit or reduce the tax liability, if any, of such corporation so qualifying; and, provided further that any corporation so qualifying for limited purposes shall not be entitled to exemptions from taxation granted to banks, homesteads, insurance companies, or nontrading corporations, or other corporations granted specific exemptions under the laws of Louisiana; and, provided further that in the event that the corporation so qualifying for limited purposes is a banking corporation under the laws of the state of its incorporation and desires to exercise some, but not all of the powers granted under its existing charter, then and in such event, the said banking corporation shall deliver to the Secretary of State at the time of filing the other documents required by this Section an additional copy of the resolution of its board of directors, trustees, or other governing body, as provided in this Subsection, and the Secretary of State shall thereupon mail or deliver to the State Banking Department said additional copy of said resolution. If within five days from such mailing or delivery to the State Banking Department said department objects in writing to the issuance of the certificate of qualification requested, the Secretary of State shall not issue said certificate. Added Acts 1950, No. 349, § 1.

§ 205. Penalty for failure to comply with law; civil action to recover fine; exceptions

A. Any corporation, or the agent of any corporation, other than a corporation engaged exclusively in foreign or interstate commerce, which establishes an office or appoints a resident agent in this state without complying with R.S. 12:202(A), (1)-(3) inclusive, shall be guilty of a misdemeanor.

B. Suit may be instituted against the corporation or the agent or both for a violation of Sub-section A. On behalf of the state, the district attorney may institute this suit in any court of competent jurisdiction in any parish where the law is violated.

C. Upon conviction of a violation of Sub-section A, the corporation or the agent or both shall be fined not less than twenty-five nor more than five hundred dollars. If the agent fails to pay the fine, he may be imprisoned for not less than three days nor more than four months.

The following sections of Acts 1914, No. 267 of the Louisiana Legislature are the source provisions for 12 La. Rev. Stat. &202 and &205 cited above:

Section 23. Be it further enacted, etc., That any corporation formed in any State, Territory or Federal district or possession of the United States, or any foreign country, shall be entitled to a certificate from the Secretary of State, authorizing it to exercise the same powers, rights and privileges as are accorded to similar domestic corporations organized under this act, upon filing in the office of the Secretary of State a certified copy of its certificate of incorporation and of its articles of incorporation; provided, however, that no certificate shall be granted to any foreign corporation having the same name or one so nearly resembling it as to be likely to deceive as that of any corporation already authorized to do business within this State. A foreign corporation so circumstanced may, however, add to its name some term which would distinguish it from the corporation already registered, and thereupon be permitted to register and engage in business.

Certified copies of any subsequent modification of the articles of incorporation or certificate of due incorporation. shall be filed in the same manner as hereinafter provided, and until so filed shall not be effective in this State. Copies of

the documents on file with the Secretary of State, certified to by him, shall be prima facie evidence of due incorporation and of authority to do business in this State.

Section 24. Be it further enacted, etc., That any foreign corporation, or the agent of any foreign corporation, that shall establish any office or appoint a resident agent within the limits of this State, without having complied with the provisions of this act, contained in the preceding section as well as the provisions of existing laws relative to the designation of domicile and of any agent or agents for service of process, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense, which sum may be recovered in a civil action against the agent or corporation or both, to be instituted by the District Attorney for and in behalf of the State, in any court of competent jurisdiction in any parish where the law is violated, and the agent failing to pay the fine may be imprisoned not less than three days nor more than four months; provided that nothing in this section or in this act contained shall apply to any foreign corporation engaged only in interstate or foreign commerce.

The following sections of Title 47 of the Louisiana Revised Statutes are involved in this case:

§ 601. Imposition of tax

Every domestic corporation and every corporation, exercising its charter, or qualified to do business or actually doing business in this state, or owning or using any part or all of its capital, plant or any other property in this state, subject to compliance with all other provisions of law, except as otherwise provided for in this Chapter shall pay an annual tax at the rate of $1.50 for each $1,000.00, or major fraction thereof on the amount of its capital stock, surplus, undivided

profits, and borrowed capital, determined as hereinafter provided; the minimum tax shall not be less than $10.00 per year in any case. The tax levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within this state in a corporate form. The term "doing business" as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in this state, as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising of a corporation's charter or the continuance of its charter within this state.

(3) The owning or using any part or all of its capital, plant or other property in this state in a corporate capacity.

It being the purpose of this section to require the payment of this tax to the State of Louisiana by domestic corporations for the right granted by the laws of this state to exist as such an organization, and by both domestic and foreign corporations for the enjoyment, under the protection of the laws of this state, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation. The tax hereby imposed shall be in addition to all other taxes levied by any other statute.

As used herein the term "domestic corporation" shall mean and include all corporations, joint stock companies or associations, or other business organizations organized under the laws of this state which have privileges, powers, rights or immunities not possessed by individuals or partnerships. The term "foreign corporation" shall mean and include all such business organizations as hereinbefore described in this

paragraph which are organized under the laws of any other state, territory or district, or foreign country.

Amended by Acts 1970, No. 325, § 1, emerg. eff. July 13, 1970 at 2:15 P.M.

§ 602. Determination of taxable capital

A. Taxable capital. Every corporation taxed under this chapter shall determine the amount of its issued and outstanding capital stock, surplus, undivided profits and borrowed capital as the basis for computing the franchise tax levied under this chapter and determining the extent of the use of its franchise in this state.

B. Holding corporation deduction. Any corporation having as a subsidiary a banking corporation as defined below shall be entitled to deduct from its capital stock, surplus, undivided profits and borrowed capital, as defined in this chapter, its investments in and advances to such subsidiary banking corporation to the extent that such investments and advances exceed the difference between the total assets and the capital stock, surplus, undivided profits and borrowed capital of the holding corporation. "Subsidiary banking corporation" is defined to be a banking corporation organized under the laws of the United States of America or of the state of Louisiana the capital stock of which to an extent of at least eighty percent is owned by a holding corporation.

C. Public utility holding corporation deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 having subsidiary corporations as defined hereinbelow, shall be entitled to deduct from the amount of its Louisiana taxable capital the amount of its investments in and advances to subsidiary corporations allocated to Louisiana under R.S. 47:606B in computing its franchise tax. "Subsidiary corporation" is defined to be a corporation in which at least

eighty percent of the voting power of all classes of its stock (not including nonvoting stock which is limited and preferred as to dividends) is owned by a registered public utility holding corporation.

§ 603. Borrowed capital

As used in this Chapter, "borrowed capital" means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date. As to any indebtedness which is extended, renewed, or re-financed, the date such indebtedness was originally incurred or contracted shall be considered for the purpose of this definition the date incurred or contracted. With respect to amounts owed by a taxpayer corporation to an affiliate, all real and actual indebtedness, regardless of age, and which in fact represent capital substantially used to finance or carry on the taxpayer's business, shall be borrowed capital. An "affiliated corporation" is any corporation which through stock ownership, directorate control, or other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation.

The following indebtedness shall be excluded:

(1) Federal, state and local tax accruals or taxes due and not delinquent more than thirty days.

(2) Advances, credits or sums of money voluntarily left on deposit with the taxpayer, or for credit account by customers or other persons with merchants, agents, brokers or factors, to facilitate the transaction of business between such parties, and by such taxpayer segregated and not otherwise used in the conduct of its business.

(3) When deposited with a trustee or other custodian or

when segregated into a separate or special account, an amount equivalent to the principal amount of cash or securities actually and in good faith set aside, for the payment of principal or interest on funded indebtedness or other fixed obligations, whether at the date of such segregation matured or maturing within ninety days thereafter or within whatever period such segregation is fixed by prior written commitment, or by court order for the liquidation of such obligation; or for the payment of dividends theretofore lawfully and formally authorized.

(4) After the approval or allowance by the court of a petition for receivership, bankruptcy or reorganization of a corporation under the bankruptcy law, there shall be deducted from borrowed capital that part of the indebtedness of the corporation which could reasonably be paid by cash and temporary investments on hand and not reasonably currently needed for working capital, if such receivership, bankruptcy or reorganization was not pending; and an equivalent amount will be allowed as an offset against cash and temporary investments on hand.

§ 604. Capital stock

For the purpose of ascertaining the tax imposed in this Chapter, capital stock, whether having par value or not, shall be deemed to have such value as is reflected on the books of the corporation, subject to examination and revision by the collector, but in no event shall such value be less than is shown on the books of the taxpaying corporation.

Where capital stock is issued for assets and the transaction is treated as a tax free exchange under R.S. 47:131, 132, 133, 135, 136, 137 and 138, the collector shall consider the cost of the assets as determined under R.S. 47:605A and the value of any intangibles acquired as the value of the stock issued to acquire such assets. Capital stock shall include full

shares, fractional shares, and any script certificates convertible into shares of stock.

§ 605. Surplus and undivided profits

A. Determination of value. For the purpose of ascertaining the tax imposed in this Chapter, surplus and undivided profits shall be deemed to have such value as is reflected on the books of the corporation, subject to examination and revision by the collector from the information contained in the report filed by the corporation as hereinafter provided and from any other information obtained by the collector; but in no event shall such revision reflect the value of any asset in excess of the cost thereof to the taxpayer at the time of acquisition; in the case of an acquisition which qualifies as a tax free exchange under R.S. 47:131, 132, 133, 135, 136, 137, and 138, cost to the taxpayer at the time of acquisition shall be deemed to be the basis of such property determined under R.S. 47:146, 148, and 152; provided that in no event shall such value be less than is shown on the books of the taxpaying corporation.

In computing surplus and undivided profits there shall be excluded such surplus as may be required by court order to be set aside and segregated in such manner as not to be available for distribution to stockholders or for investment in properties, the earnings from which are distributable to stockholders; provided further that in computing surplus and undivided profits there shall be included all reserves other than those for definitely fixed liabilities, reasonable depreciation (including in reasonable depreciation, at taxpayer's election, amortization of a war, defense or other emergency facility taken by and allowable to a taxpayer for income tax purposes under R.S. 47:65, provided such amortization is recorded on the books of the taxpayer), bad debts and established valuation reserves, such reserves in all cases to be made under rules and regulations to be prescribed by the collector. When,

because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record in its books the full amount of depreciation sustained, the taxpayer may apply to the collector of revenue for permission to add to its reserve for depreciation and deduct from its surplus the amount of depreciation sustained but not recorded, and if the collector finds that the amount proposed to be so added represents a reasonable allowance for actual depreciation, he shall grant such permission. The collector also shall allow inclusion in depreciation reserves (but shall not limit the reserve thereto, if otherwise reasonable) depreciation taken by and allowable to a taxpayer under R.S. 47:65 provided such depreciation is recorded on the books of the taxpayer.

B. Treatment of deficit. If the accounts titled surplus and undivided profits reflect a negative figure or deficit, such deficit shall be deductible from capital stock and borrowed capital for the purpose of computing the tax.

§ 606. Allocation of taxable capital

A. General allocation formula.

For the purpose of ascertaining the tax imposed in this Chapter, every corporation subject to the tax is deemed to have employed in this state the proportion of its entire issued and outstanding capital stock, surplus, undivided profits and borrowed capital, computed on the basis of the ratio obtained by taking the arithmetical average of the following ratios:

(1) The ratio that the net sales made to customers in the regular course of business and other revenue attributable to Louisiana bears to the total net sales made to customers in the regular course of business and other revenue. For the purposes of this Sub-section net sales and other revenues attributable to Louisiana shall be determined as follows:

(a) Sales attributable to this state shall be all sales where the goods, merchandise or property is received in this state by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. However, direct delivery into this state by the taxpayer to a person or firm designated by a purchaser from within or without the state shall constitute delivery to the purchaser in this state. Revenue derived from a sale of property not made in the regular course of business shall not be considered.

(b) Revenues attributable to this state derived from air transportation shall include all gross receipts derived from passenger journeys and cargo shipments originating in Louisiana.

(c) Revenues attributable to this state derived from transportation of crude petroleum, natural gas, petroleum products or other commodities for others through pipelines shall include all gross revenue derived from operations entirely within this state plus a portion of any revenue from operations partly within and partly without this state, based upon the ratio of the number of units of transportation service performed in Louisiana in connection with such revenue to the total of such units. A unit of transportation service shall be the transporting of any designated quantity of crude petroleum, natural gas, petroleum products or other commodities for any designated distance.

(d) Revenues attributable to this state derived from transportation other than aircraft or pipeline shall include all such income that is derived entirely from sources within this state, and a portion of revenue from transportation partly without and partly within this state, to be prorated subject

to rules, and regulations of the collector, which shall give due consideration to the proportion of service performed in Louisiana.

(e) Revenues from services other than those described above shall be attributed within and without Louisiana on the basis of the location at which the services are rendered.

(f) Rents and royalties from immovable or corporeal movable property, shall be attributed to the state where such property is located at the time the revenue is derived.

(g) Interest on customers' notes and accounts shall be attributed to the state in which such customers are located.

(h) Other interest and dividends shall be attributed to the state in which the securities or credits producing such revenue have their situs, which shall be at the business situs of such securities or credits, if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs shall be at the commercial domicile of the corporation.

(i) Royalties or similar revenue from the use of patents, trade marks, copyrights, secret processes and other similar intangible rights shall be attributed to the state or states in which such rights are used.

(j) Revenues from a parent or subsidiary corporation shall be allocated as provided in Sub-section B of this Section.

(k) All other revenues shall be attributed within and without this state on the basis of such ratio or ratios, prescribed by the collector, as may be reasonably applicable to the type of revenues and business involved.

(2) The ratio that the value of all of the taxpayer's property and assets situated or used in Louisiana bears to the

value of all of its property and assets wherever situated or used. In determining value, depreciation and depletion reserves must be deducted from the book values of the properties in question. The various classes of property and assets shown below shall be allocated within and without Louisiana on the bases indicated:

(a) Cash shall be allocated to the state in which located.

(b) Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(c) Trade accounts and trade notes receivable shall be allocated by reference to the transactions from which the receivables arose, on the basis of the location at which delivery was made in the case of sale of merchandise or the location at which the services were performed in case of charges for services rendered.

(d) Investments in and advances to a parent or subsidiary shall be allocated as provided in Sub-section B of this Section.

(e) Notes and accounts other than those notes and accounts described under items (b) and (d) above shall be allocated to the state in which they have their business situs, or in the absence of a business situs, to the state in which is located the commercial domicile of the taxpayer.

(f) Stocks and bonds not included in (b) or (d) above shall be allocated to the state in which they have their business situs or in absence of a business situs to the state in which is located the commercial domicile of the taxpayer.

(g) Immovable and corporeal movable property shall be allocated within and without Louisiana on the basis of

actual location. Corporeal movable property of a class which is not normally located within a particular state the entire taxable year shall be allocated within and without Louisiana by use of a ratio or ratios which shall give due consideration to the usage within and without this state. Mineral leases and royalty interests shall be allocated to the state in which the property covered by the lease or royalty interest is located.

(h) All other assets shall be allocated within or without Louisiana on the basis, prescribed by the collector, as may reasonably be applicable to the assets and the type of business involved.

B. Allocation of intercompany items. For the purpose of allocation, investments in, advances to, or revenues from a parent or subsidiary corporation shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana for corporation franchise tax purposes by the parent or subsidiary corporation. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly or substantially owned by another corporation and whose management, business policies and operations are, howsoever, actually, wholly or substantially controlled by another corporation; which latter corporation shall be termed the parent corporation.

C. Minimum allocation; assessed value of real and personal property. The portion of capital stock, surplus, undivided profits and borrowed capital allocated for franchise taxation under this Chapter shall in no case be less than the total assessed value of real and personal property in this state of each such domestic or foreign corporation for the calendar year preceding that in which the tax is due.

§ 607. Railroad corporations

A. Incorporated in more than one state. Any railroad

corporation incorporated under and by virtue of the laws of more than one state, shall compute its tax in the same manner as a foreign corporation.

B. Domestic railroad corporations with foreign subsidiaries. Any railroad corporation organized only under the laws of Louisiana and which, in whole or in part, operates, does business or owns property and assets outside of the state, either directly, or indirectly through one or more foreign subsidiary corporations, the capital stock, and funded debt of which to the extent of at least eighty percentum (80%) each is owned by the railroad corporation organized only under the laws of Louisiana, shall compute its tax as follows:

For the purpose of such computation the total of the property and assets of the corporation organized only under the laws of Louisiana, both within and without the state, shall include the property and assets of its foreign subsidiary or subsidiaries; the total volume of business done by the corporation, both within and without the state, shall include the volume of business done by its foreign subsidiary or subsidiaries; there shall be included in the report of the corporation a comparative consolidated balance sheet of the corporation and its foreign subsidiary or subsidaries, as of the beginning and close of its last calendar year or fiscal year; and the entire issued and outstanding capital stock, surplus and undivided profits of the corporation shall be deemed to be the entire issued and outstanding capital stock, surplus and undivided profits, determined as herein provided, of the corporation and its foreign subsidiary or subsidaries on the basis of their consolidated accounts.

§ 608. Exemptions

The provisions of this Chapter do not apply to corporations organized for the following purposes:

(1) Labor, agricultural, or horticultural corporations;

(2) Mutual savings banks, national banking corporations and banking corporations organized under the laws of the state of Louisiana who pay a tax for their shareholders or whose shareholders pay a tax on their shares of stock under other laws of this state, and building and loan associations;

(3) Fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, or other benefits to members of such society, order or association or their dependents;

(4) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(5) Corporations and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(6) Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(7) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(8) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(9) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations, but only if eighty-five percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(10) Insurance corporations paying a premium tax under Title 22 of the Louisiana Revised Statutes of 1950;

(11) Farmers', fruitgrowers', or like associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the product furnished by them, or for the purpose of purchasing supplies and equipment for the use of members or other persons and turning over such supplies and equipment to them at actual costs, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed eight per cent per annum on the value of the consideration for

which the stock was issued, and if substantially all of such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed fifteen per cent of the value of all its purchases;

(12) Corporations organized by an association exempt under the provisions of paragraph (11) of this Section or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed eight per cent per annum on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate directly or indirectly, in the profits of the corporation, upon dissolution, or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by state law or a reasonable reserve for any necessary purpose;

(13) Corporations organized for the exclusive purpose

of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to organizations which are organized and operated exclusively for religious, charitable, scientific, literary, and educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder;

(14) Voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual and if eighty-five per cent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(15) Teachers' retirement fund associations of a purely local character, if no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and if the income consists solely of amounts received from assessments upon the teaching salaries of members, and income in respect of investments.

§ 609. Accrual, payment and reporting of tax

The tax levied by this Chapter is for the annual accounting period, fiscal, or calendar year, regularly used by the taxpayer in keeping its books, with no proration for a portion of the year in the case of dissolution of domestic corporations or withdrawal from the state by foreign corporations or where a corporation otherwise ceases to become taxable under this Chapter. The tax accrues on the first day of each calendar or fiscal year and annually thereafter, and is computed on the basis of the previous calendar or fiscal year closing. The tax is payable to the collector on or before the fifteenth day of the fourth month following the month in which the tax

accrues. With its payment the taxpayer shall deliver to the collector a full, accurate and complete report and statement signed by a duly authorized official of the corporation, containing such information as the collector may require. In the year 1959 corporations presently using the fiscal year basis shall report and pay the tax levied herein for the period January 1, 1959, to the first fiscal closing date thereafter. The tax shall be based on the fiscal year closing prior to January 1, 1959, and shall be computed by multiplying the ratio that the number of months from January 1, 1959, to the fiscal closing in the year 1959 bears to twelve, times the tax as computed on the yearly basis. The tax due for the period January 1, 1959, to the first fiscal closing thereafter may be reported and paid with the next payment regularly due as provided herein. Subsequent returns shall be filed in accordance with this amendment.

If permission is granted to change the corporate accounting period as provided in R.S. 47:613, the corporation shall file a return for the period from the end of the twelve-month period for which the tax had already accrued to the first fiscal closing of the new accounting period. The tax to be paid in this case shall be based on the preceding fiscal closing and shall be computed by multiplying the ratio that the number of months from the closing date under the prior accounting period to the closing of the new accounting period bears to twelve, times the tax as computed on the yearly basis. Subsequent returns will be filed on the basis of the new accounting period in accordance with the provisions of this amendment.

§ 610. Repealed by Acts 1958, No. 437, § 1

History and Sources of Law

This section was derived from Acts 1935, 1st Ex.Sess., No. 10, § 3(1), Acts 1946, No. 201, and related to accrual and payment of tax. Subject matter is now covered by R.S. 47:609.

§ 611. Newly taxable corporation

Every corporation shall pay only the minimum tax of ten dollars ($10.00) in the first accounting period or fraction thereof in which it becomes subject to the tax levied herein. The first tax accrues immediately on the corporation's becoming taxable under this Chapter and is payable on or before the fifteenth day of the fourth month after the month in which the tax accrues. After the first closing of the corporate books the tax is payable as provided in R.S. 47:609.

§ 612. Extension of time for filing return and paying tax

The collector may grant a reasonable extension, not to exceed six months, for the filing of the report required in this Chapter if application for such extension is requested by the taxpayer prior to the time when the report is due to be filed. The effective date from which interest is to be computed will in all cases remain as is hereinafter provided.

§ 613. Fiscal year defined; accounting period not to be changed

"Fiscal year" as used in this Chapter, means an accounting period of twelve months ending on the last day of any month other than December. However, no fiscal year will be recognized, unless, before its close, it was definitely established as an accounting period by taxpayer and the books of such taxpayer were kept in accordance therewith. No accounting period shall be changed without the approval of the collector of revenue.

§ 614. Cost of collection

The cost required by the collector in the collection of the tax imposed in this Chapter shall be withheld and paid out of the first sums realized on the collection of the tax or

any penalties and interest applicable thereto, and for these purposes, the expenses of the collector shall not exceed one hundred thousand dollars ($100,000.00) per annum.

§ 615. Disposition of collections

All moneys collected from the tax, interest, and penalties provided for in this Chapter, less expenses withheld as provided in R.S. 47:614, shall be remitted to the treasurer on or before the tenth day of the month following the month in which collections are made. The treasurer shall allocate and distribute the collections as follows:

(1) The first four hundred thousand dollars of the annual collections shall be remitted directly to the Board of Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital for the payment of principal and interest and any required reserves therefor that may be due by the board of administrators of the hospital to the Federal Emergency Administration of Public Works or to any board, body or agency succeeding to its powers and duties or to any other federal agency, or any other purchaser or holder, on account of any bonds or other obligations issued and sold thereto or contracts entered into therewith, by the board of administrators for the objects and purposes prescribed in Section 1 of Act 166 of 1934, and subject to the provisions of Section 7 of Act 166 of 1934, as amended by Act 72 of 1936; provided, that any balance of the sum of four hundred thousand dollars after paying these bonds and the interest thereon as the same shall become due and establishing and maintaining any required reserve fund therefor, may be used by the hospital and pledged to the payment of bonds or other obligations referred to hereinafter in paragraph (2) of this Section.

(2) The second four hundred thousand dollars of the annual collections shall be remitted directly to the Board of

Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital for the payment of principal and interest and any required reserves therefor that may be due by the board of administrators of the hospital to the Federal Emergency Administration of Public Works or to any board, body or agency succeeding to its powers and duties or to any other federal agency, or any other purchaser or holder, on account of any bonds or other obligations issued and sold thereto or contracts entered into therewith by the board of administrators of the hospital, for the objects and purposes prescribed in Act 4 of 1938, and subject to the provisions of section 7 of that act.

(3) In addition to the amounts authorized to be remitted annually to the Charity Hospital of Louisiana at New Orleans under the provisions of Subsections (1) and (2) of this Section, the additional amount of two hundred thousand dollars of the annual collections shall be remitted directly to the Board of Administrators of the Charity Hospital of Louisiana at New Orleans. This money shall be used by the hospital, first, for the payment of outstanding bonds issued pursuant to Act 166 of the Regular Session of 1934, as amended by Act 72 of the Regular Session of 1936 and Act 4 of the Regular Session of 1938, and, second, for the payment of the principal of and interest on the bonds authorized to be issued by Act 97 of 1966 for the purposes set forth in said Act 97 of 1966 and subject to the provisions of said Act.

(4) Forty thousand dollars thereof annually to the Governor of Louisiana to be used by him for the preservation of law and order, in the enforcement of state law, in apprehending fugitives from justice, in paying rewards for the apprehension of criminals, and in paying the costs of investigations lawfully ordered, promoting the general welfare, and publicizing the state of Louisiana.

(5) After making payment of the sums above specified

there shall be remitted of the annual collection to the board of supervisors of the Louisiana State University and Agricultural and Mechanical College the following sums in the following order:

(a) The sum of three hundred fifty thousand dollars to be used to construct, furnish and equip additional buildings and to demolish, replace, remodel or enlarge any existing buildings deemed necessary or advisable by said board on the campus of the university at Baton Rouge, on the campus of the North East Center at Monroe, or on the grounds of the medical school at New Orleans.

(b) The sum of one million two hundred seventeen thousand dollars to be used by the board of supervisors of the Louisiana State University and Agricultural and Mechanical College for its endowment, maintenance and support; for constructing, furnishing and enlarging any buildings, and for repairing, remodeling or enlarging existing buildings.

(6) The remainder of the annual collections, after paying the sums specified in this Section and in R.S. 47:614 in the order set out, shall be credited to the general fund of the state and disbursed by the State Treasurer as directed by law.

§ 616. Franchise taxes by local governments prohibited

Parishes, cities and towns shall not levy a franchise tax on the corporations taxed under this Chapter.

• • • • •

PART III. ASSESSMENT AND COLLECTION PROCEDURES

§ 1561. Alternative remedies for the collection of taxes

In addition to following any of the special remedies pro-

vided in the various chapters of this subtitle, the collector may, in his discretion, proceed to enforce the collection of any taxes due under this subtitle by means of any of the following alternative remedies or procedures:

(1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.

(2) Summary court proceeding, as provided in R.S. 47:1574.

(3) Ordinary suit under the provisions of the general laws regulating actions for the enforcement of obligations.

The collector may choose which of these procedures he will pursue in each case, and the counter-remedies and delays to which the taxpayer will be entitled will be only those which are not inconsistent with the proceeding initiated by the collector, provided that in every case the taxpayer shall be entitled to proceed under R.S. 47:1576 except (a) after he has filed a petition with the board of tax appeals for a redetermination of the assessment, or (b) when an assessment for the tax in question has become final or (c) when a suit involving the same tax obligation is pending against him; and provided further, that the fact that the collector has initiated proceedings under the assessment and distraint procedure will not preclude him from thereafter proceeding by summary or ordinary court proceedings for the enforcement of the same tax obligation.

§ 1562. Determination and notice of tax due

If a taxpayer fails to make and file any return or report required by the provisions of this Sub-title, or if the return or report made and filed does not correctly compute the liability of said taxpayer, the collector shall cause an audit, investigation or examination to be made to determine the tax, penalty and interest due, or he shall determine the tax, penalty or

interest due by estimate or otherwise. Having determined the amount of tax, penalty and interest due, the collector shall send by mail a notice to the taxpayer at the address given in the last report filed by him pursuant to the provisions of the Chapter governing the tax involved, or if no report has been filed, to any address that may be obtainable, setting out his determination and informing the person of his purpose to assess the amount so determined against him after fifteen calendar days from the date of the notice.

Amended by Acts 1971, No. 58, § 1.

§ 1563. Protest to collector's determination of tax due

The taxpayer, within fifteen calendar days from the date of the notice provided in R.S. 47:1562 may protest thereto. This protest must be in writing and should fully disclose the reasons, together with facts and figures in substantiation thereof, for objecting to the collector's determination. The collector shall consider the protest, and in his discretion may grant a hearing thereon, before making a final determination of tax, penalty and interest due.

Amended by Acts 1971, No. 58, § 1.

§ 1564. Assessment of tax, interest and penalties

At the expiration of fifteen calendar days from the date of the collector's notice provided in R.S. 47:1562, or at the expiration of such time as may be necessary for the collector to consider any protest filed to such notice the collector shall proceed to assess the tax, penalty and interest that he determines to be due under the provisions of any Chapter of this Subtitle. The assessment shall be evidenced by a writing in any form suitable to the collector, which sets forth the name of the taxpayer, the amount determined to be due, the kind of

tax, and the taxable period for which it is due. This writing shall be retained as a part of the collector's official records. The assessment may confirm or modify the collector's originally proposed assessment.

Amended by Acts 1971, No. 58, § 1.

§ 1565. Notice of assessment and right to appeal

A. Having assessed the amount determined to be due, the collector shall send, by registered mail, a notice to the taxpayer against whom the assessment lies, at the address given in the last report filed by said taxpayer, or if no report has been filed to any such address as may be obtainable. This notice shall inform the taxpayer of the assessment made against him and notify him that he has thirty calendar days from the date of the notice within which either to pay the amount of the assessment or to appeal to the board of tax appeals for a redetermination of the assessment. All such appeals shall be made in the manner set out in Chapter 17, Subtitle II of this title.

B. If at the expiration of the delay of thirty calendar days the taxpayer has not filed an appeal with the board of tax appeals, then, except as provided in Subsection C of this section, the assessment shall be final and shall be collectible by distraint and sale as hereinafter provided. If an appeal to the board of tax appeals for a redetermination of the assessment has been filed, the assessment shall not be collectible by distraint and sale until such time as the assessment has been redetermined or affirmed by the board of tax appeals or the court which last reviews the matter.

C. No assessment made by the collector shall be final if it is determined that the assessment was based on an error of fact or of law. An error of fact for this purpose means facts material to the assessment assumed by the collector at the

time of the assessment to be true but which subsequently are determined by the collector to be false. Error of law for this purpose means that in making the assessment the collector applied the law contrary to the construction followed by the collector in making other assessments. The determination of an error of fact or of law under this subsection shall be solely that of the collector, and no action against the collector with respect to the determination shall be brought in any court, nor shall any appeal relating thereto be brought before the board of tax appeals, and no court shall have jurisdiction of any such appeal, it being the intent of this subsection only to permit the collector to correct manifest errors of fact or in the application of the law made by the collector in making the assessment; provided however, that all reductions of assessments based on such errors must be approved and signed by the collector of revenue, and the general counsel of the Department of Revenue, and shall then be approved by the board of tax appeals and signed by the chairman thereof. The remedies of a taxpayer aggrieved by any action of the collector are by appeal to the board of tax appeals or by payment of the disputed tax under protest and suit to recover as provided in this subtitle.

* * * * * *

§ 1569. Collection by distraint and sale authorized

When any taxpayer fails to pay any tax, penalty and interest assessed, as provided in this Sub-title, the collector may proceed to enforce the collection thereof by distraint and sale.

§ 1570. Distraint defined

The words "distraint" or "distrain" as used in this Subtitle, shall be construed to mean the right to levy upon and seize and sell, or the levying upon or seizing and selling, of any property or rights to property of the taxpayer including goods, chattels, effects, stocks, securities, bank accounts, evidences

of debt, wages, real estate and other forms of property, by the collector or his authorized assistants, for the purpose of satisfying any assessment of tax, penalty or interest due under the provisions of this Sub-title.

Property exempt from seizure by Articles 644 and 645 of the Louisiana Code of Practice is exempt from distraint and sale herein.

§ 1571. Distraint procedure

Whenever the collector or his authorized assistants shall distrain any property of a taxpayer, he shall cause to be made a list of the property or effects distrained, a copy of which, signed by the collector or his authorized assistants shall be sent by registered mail to the taxpayer at his last known residence or business address, or served on the taxpayer in person. This list shall be accompanied with a note of the sum demanded and a notice of the time and place where the property will be sold. Thereafter, the collector shall cause a notice to be published in the official journal of the parish wherein the distraint is made, specifying the property distrained, and the time and place of sale. The sale shall be held not less than fifteen calendar days from the date of the notice mailed or served on the taxpayer or the date of publication in the official journal, whichever is later. The collector may postpone such sale from time to time, if he deems it advisable, but not for a time to exceed thirty calendar days in all. If the sale is continued to a new date it shall be readvertised.

§ 1572. Surrender of property subject to distraint

Any person in possession of property or rights to property subject to distraint, upon which a levy has been made, shall, upon demand by the collector or his authorized assistants, making such levy, surrender such property or rights to the

collector or his authorized assistants, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person failing or refusing to surrender any such property or rights shall be liable to the state in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes, penalties, and interest and other costs and charges which are due.

§ 1573. Sale of distrained property

The collector, or his authorized assistants, shall sell at public auction for cash to the highest bidder so much of the property distrained by him as may be sufficient to satisfy the tax, penalties, interest, and costs due. He shall give to the purchaser a certificate of sale which will be prima facie evidence of the right of the collector to make the sale, and conclusive evidence of the regularity of his proceedings in making the sale, and which will transfer to the purchaser all right, title and interest of the taxpayer in and to the property sold.

Out of the proceeds of the sale, the collector shall first pay all costs of the sale and then apply so much of the balance of the proceeds as may be necessary to pay the assessment. Any balance beyond this shall be paid to the taxpayer.

• • • • •

§ 1576. Payment of tax under protest; remedy at law for recovery

A right of action is hereby created to afford a remedy at law for any person aggrieved by the prohibition of courts restraining the collection of tax, penalty, interest or other charges imposed in this Sub-title. The person resisting the payment of any amount found due by the collector, or of enforcement of any provisions of this Sub-title, shall pay the amount found due to the collector and at that time shall give

the collector notice of his intention to file suit for the recovery thereof. Upon receipt of this notice, the amount paid shall be segregated and held by the collector or his duly authorized representatives for a period of thirty days. If suit is filed within the thirty-day period for the recovery of such amount, the funds segregated shall be further held pending the outcome of the suit. If the person prevails, the collector shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the collector to the date of refund.

This Section shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Sub-title, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such action, service of process upon the collector shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.

This Section shall be construed to provide a legal remedy in the state or federal courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or the Constitution of the State of Louisiana, or in any case where jurisdiction is vested in any of the courts of the United States.

Upon request of a person and proper showing by such person that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, such person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the collector until the question of law involved has been determined by the courts and shall then be disposed of as therein provided.

SUPREME COURT OF LOUISIANA

NO. 52115

STATE OF	:	NOS. 87,832-833-838
LOUISIANA	:	19TH JUDICIAL DISTRICT COURT
VERSUS	:	PARISH OF EAST BATON ROUGE
LEON S. POIRIER	:	STATE OF LOUISIANA

REASONS FOR JUDGMENT

The accused filed motions to quash bills of information charging him with violations of R.S. 47:1641, which reads as follows:

Section 1641. Criminal penalty for failing to account for state tax money

Any person required under this Sub-title to collect, account for, or pay over any tax, penalty, or interest imposed by this Sub-title, who wilfully fails to collect or truthfully account for or pay over such tax, penalty or interest, shall in addition to other penalties provided by law, be guilty of a felony and shall be fined not more than ten thousand dollars ($10,000.00) or imprisoned for not more than five years, or both.

In answer to questions in bills of particulars, the state admits that the accused did not collect or withhold the taxes which he is charged with not paying from some other person and that he is only accused of not paying his own income tax.

It is the opinion of this Court that R.S. 47:1641 must be considered in its entirety, including its title, and in conjunction with R.S. 47:1642, which reads as follows:

Section 1642. Criminal penalty for evasion of tax

Any person who wilfully fails to file any return or report required to be filed by the provisions of this Sub-

title, or who wilfully files or causes to be filed, with the collector, any false or fraudulent return, report or statement, or who wilfully aids or abets another in the filing with the collector of any false or fraudulent return, report of statement, with the intent to defraud the state or evade the payment of any tax, fee, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of this Sub-title, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than one year, or both.

Section 1641 clearly contemplates the more serious offense which would result if a person who has a statutory duty to collect or withhold taxes from some other person does so and then fails to account for or pay over the taxes to the State.

Section 1642 applies to a situation where a taxpayer attempts to evade payment of his own taxes by failing to file a return or by filing a false or fraudulent return, and this section carries a lesser penalty than Section 1641. To construe R.S. 47:1641 in the manner in which the state argues would make it a more serious crime to simply fail to pay one's own taxes than to file a false and fraudulent return.

Both of these penalty provisions were apparently taken from Federal statutes, and R.S. 47:1641 is identical to 26 USCA 7202 except for the word "or" being substituted in Section 1641 for "and" in the Federal statute.

The explanation of 26 USCA 7202 contained in the 1954 U. S. Code Congressional and Administrative News at page 5251 is as follows:

Section 7202. Willful failure to collect or pay over tax

This section is identical with that of the House bill.

This section provides that, in the case of any tax imposed by this title **which any person must collect and pay over to the United States**, it is a felony punishable by a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, willfully to fail to collect or truthfully account for and pay over such tax. This

provision corresponds to numerous sections of existing law which cover this offense. (Emphasis supplied)

It is the opinion of this Court that the intent of the state statute and the Federal statute were and are the same despite the use of the conjunction "or" in the state statute. To hold otherwise would subject to prosecution any person who failed to pay his own tax for whatever reason, financial inability or otherwise, so long as the failure to pay was willful. To hold that any person required by law to pay any tax, who wilfully fails to pay such tax, is guilty of a felony under R.S. 47:1641 would construe that statute to embrace many acts which could not be criminal in nature. The words "to collect," "account for" and "pay over" contained in Section 1641, in the Court's opinion, clearly imply more than merely failing to pay one's own individual income tax in full.

The conduct of which the defendant is accused is prohibited by R.S. 47:1642 and he was improperly billed under R.S. 47:1641 which was intended to apply to cases where a person collects taxes as the statutory agent of the state and then fails to pay them over.

The motions to quash are sustained.

Baton Rouge, Louisiana, this 31st day of January, 1972.

s/ DONOVAN W. PARKER, Judge

Filed January 31, 1972

s/ ————————, Deputy Clerk

A TRUE COPY
Clerk's Office
Parish of East Baton Rouge
Baton Rouge, Louisiana
August 28, 1974

s/ Brenda Lively, Deputy Clerk

SUPREME COURT OF LOUISIANA

New Orleans, 70112

87832—838

STATE OF LOUISIANA February 3, 1972

V.

LEON S. POIRIER NO. 52,115

In re: State of Louisiana applying for writs of certiorari, prohibition and mandamus.

Writ refused. The ruling complained of is correct.

/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ FWS
/s/ MEB
/s/ AT Jr.
/s/ JAD

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 3, 1972

s/ ————————, Deputy Clerk

SUPREME COURT OF LOUISIANA

New Orleans 70112

87832—838

STATE OF LOUISIANA January 25, 1972

V.

LEON S. POIRIER NO. 52,088

In re: State of Louisiana applying for writs of certiorari, prohibition and mandamus.

Application denied; the ruling of the trial judge is correct.

/s/ JAD
/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ FWS
/s/ MEB
/s/ AT Jr.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
January 25, 1972

s/ ————————, Deputy Clerk

SUPREME COURT, U. S.
FILED
DEC 30 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1595

COLONIAL PIPELINE COMPANY,

Appellant

versus

JOSEPH N. TRAIGLE, COLLECTOR OF REVENUE,

Appellee

On Appeal from the Supreme Court of the State of Louisiana

REPLY BRIEF FOR THE APPELLANT

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Appellee

On Appeal from the Supreme Court of the State of Louisiana

REPLY BRIEF FOR THE APPELLANT

The Tax Collector's brief requires response on several issues. Colonial accordingly files this reply brief.

I.

AS TO THE "BINDING NATURE" OF THE STATE COURT'S CONSTRUCTION OF THE TAX

The Collector argues that the state court has construed the statute as levying the tax upon "alternative operating incidents" and not upon the privilege of doing business in Louisiana; further, the Collector argues that the state court's construction is binding upon this Court (Collector's brief Pages 7-10). The state court's construction of the state law, however, constitutes the beginning, not the end, of this inquiry. Chief Justice Marshall pointed out long ago in *Elmendorf v. Taylor*, 10 Wheat. 152, 23 U. S. 152, 6 L.Ed. 289, that federal courts accept state court determinations as final only upon matters of state law:

> ". . . [T]he construction given by the courts of the several states, to the legislative acts of those states, is received as true, **unless they come in conflict with the constitution, laws or treaties of the United States . . .**" (10 Wheat. at 160; emphasis supplied)

In making its inquiry into the validity of a state law under the Federal Constitution, this Court is not bound by a state court's shibboleth such as "separate local incident" or "alternative operating incidents." The question to be decided is whether the statute, as interpreted by the state court, amounts to a tax upon interstate commerce and thus infringes the Commerce Clause. And where, as here, the so-called "alternative operating incident" is inseparable from Colonial's interstate business, we submit that the Louisiana tax is a tax upon interstate commerce and thus infringes the Commerce Clause.

In *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, 96 L.Ed. 436, 72 S.Ct. 424, this Court refused to be bound by the state court's determination that a franchise tax upon solicitation of interstate laundry business was a local activity, carefully pointing out the limitations of such state determinations:

> "The State may determine for itself the operating incidence of the tax. But it is for this Court to determine whether the tax, as construed by the highest court of the State, is or is not 'a tax on interstate commerce.'" (342 U.S. at 392)

The tax was declared invalid and this Court significantly stated:

> ". . .The Commerce Clause created the nationwide area of free trade essential to this country's economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause." (342 U.S. at 395)

Thus, although Louisiana has construed the amended franchise tax as a tax on "alternative operating incidents," the state's determination as to the effect of the tax upon interstate commerce is in no way binding upon this Court.

Louisiana contends that the thrust of the statute is to tax not the interstate business done in Louisiana by Colonial, but the doing of such business in Louisiana in corporate form. Thus, says Louisiana, the tax is not upon the privilege of

doing business in Louisiana, but upon the privilege of doing business in Louisiana in the corporate form.[1]

This Court is no more bound by the Louisiana Supreme Court's determination that the privilege of doing interstate business in Louisiana in corporate form is a "local incident" than it was bound by the Mississippi Supreme Court's determination that solicitation of interstate business in Mississippi was a "local incident." To hold otherwise would effectively turn over to the states the power of determining whether a state tax "is or is not a tax on interstate commerce." Letting the states determine the extent of Commerce Clause restraints upon themselves is rather like leaving the fox in charge of the hen house. It is for this very reason that this Court forcefully stated in *Kansas City Structural Steel Co. v. Arkansas*, 269 U.S. 148, 46 S.Ct. 59, 70 L.Ed. 204:

> "We accept the decision of the Supreme Court of Arkansas as to what constitutes the doing of business in that State within the meaning of its own laws. Georgia v. Chattanooga, 264 U.S. 472, 483, 68 L.Ed. 796, 800, 44 Sup.Ct. Rep. 396. **But the court will determine for itself whether what was done by plaintiff in error was interstate commerce and whether the state enactments as applied are repugnant to the commerce clause.**" (269 U.S. at 150) (Emphasis added)

But even if doing business in corporate form be construed the taxable incident, the inquiry does not end there, as Louisiana would have it end. This Court has long since recognized that a state tax on "local activities" carried on by an

[1] We make passing reference to the obvious by noting that Louisiana's corporation franchise tax, from its inception, has been levied only upon corporations, that is, upon taxpayers doing business in Louisiana **in the corporate form.** In this case the taxpayer is doing only interstate business.

interstate business can only be sustained as against a Commerce Clause challenge, if the so-called "local activity" is sufficiently separate from its interstate commerce to justify the levy. The Louisiana tax is not a tax on a "disconnected local incident" of Colonial's interstate business. However labeled, it is a tax or excise on Colonial's interstate business.

We suggest that the addition of a few words to the comment of the Louisiana Supreme Court appearing upon Page 30 and 31 of the Jurisdictional Statement will emphasize the fact that the tax as construed by the Louisiana court is a tax upon interstate commerce. First, it must be noted that the state admits that the only business done by Colonial in Louisiana is exclusively interstate business (Jurisdictional Statement, Page 26).[2] We have added the words in brackets:

> "The tax is due and payable on any one or all of three alternative incidents:
>
> a) doing [interstate] business in Louisiana in a corporate form
>
> b) the exercising of a corporation's charter [in interstate commerce] or the continuance of its charter [in interstate commerce] within the state and
>
> c) the owning or using any part or all of its capital, plant or other property [in interstate commerce] in Louisiana in a corporate capacity." (Jurisdictional Statement, Page 30)

[2] In the words of *Spector Motor Service v. O'Connor*, 340 U. S. 602, 71 S.Ct. 508, 95 L.Ed. 573: "the incidence of the tax is upon no intrastate commerce activities because there are none. Petitioner is engaged only in interstate commerce."

Each of the so-called "alternative incidents" is imposed unequivocally and directly upon interstate commerce. None represents a separate "local incident" or privilege granted to Colonial by the State of Louisiana, for Colonial gains its right to engage in interstate commerce in Louisiana from the national, not the state government.

As noted in Colonial's original brief, this Court has held that the privilege or right to carry on interstate commerce is not a franchise or privilege granted by the state, but on the contrary, is one which every citizen, corporate or otherwise, is entitled to exercise under the Constitution and laws of the United States. *Crutcher v. Kentucky*, 141 U.S. 47, 35 L.Ed. 649, 11 S.Ct. 851. Thus, under the Constitution, Colonial has the right of:

a) doing **interstate** business in Louisiana in a corporate form

b) exercising its corporate charter in **interstate commerce** and the continuance of its charter **in interstate commerce** within the state and

c) owning or using any part or all of its capital, plant or other property **in interstate commerce** in Louisiana in a corporate capacity.

The simple fact of the matter is that Louisiana has no right to levy a tax upon the privilege of doing interstate business in a corporate form because the privilege of doing such business flows, not from the state, but from the United States.

In the final analysis, to paraphrase this Court in *Memphis Steam Laundry*, if the Louisiana tax is imposed on doing interstate business in corporate form in Louisiana, the tax

stands on no better footing than a tax upon the privilege of doing interstate business. Therefore, accepting as correct the Louisiana court's construction of the operating incidence of the Louisiana franchise tax, that tax imposed, as it is, on Colonial's interstate business cannot stand under the Commerce Clause.

The fact that the statute does not discriminate does not save the tax. *Spector Motor Service v. O'Connor, supra.* The fact that the tax is apportioned does not save it from invalidity, for this is not a case where the taxpayer is engaged both in intrastate and interstate commerce. This is a tax which attaches solely because Colonial does its exclusively interstate business in corporate form. "The constitutional infirmity of such a tax persists no matter how fairly" it applies. *Spector Motor Service, supra.* Otherwise, the "federal privilege of carrying on exclusively interstate commerce free from state taxation" will no longer exist.

Clearly Louisiana could not prohibit a foreign corporation from "exercising its corporate charter" in interstate commerce in Louisiana. The privilege of engaging in interstate commerce cannot be granted or withheld by a state. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed2d 421. Since the state does not possess the power to grant or deny interstate business within its borders, Colonial obtains no franchise or right from the state for which the state may expect payment. *Cruther v. Kentucky, supra.* A state tax on the corporate capacity of a business engaged exclusively in interstate commerce, however ingenuously labeled, cannot be permitted to stand without ultimate destruction of these fundamental constitutional principles.

As noted in Colonial's original brief (Pages 12-19) the "erosion" cases relied on by the Louisiana Supreme Court and cited by the Collector (Collector's brief, Pages 16-24) are not determinative of the issue here. They involve peculiar facts and particular state statutory provisions, different in language or effect from the Louisiana statute. We therefore reiterate that this case offers this Court an opportunity to re-affirm the Commerce Clause as the intended safeguard for the free interchange of commerce and business activity among the states, and under the decided cases this Court is not bound by the Louisiana decision in doing so.

II.

AS TO THE "LOCAL ACTIVITIES"

The Collector, as did the Louisiana Supreme Court, relies heavily upon the case of ***Memphis Natural Gas Company*** *v.* ***Stone***, 335 U.S. 80, 68 S.St. 1475, 92 L.Ed. 1832. Neither the Collector nor the state court, however, has pointed out one of the more significant determinations made in that case. Memphis Natural Gas Company was not simply an interstate common carrier; on the contrary, it owned the products which it was transporting and it actually made sales of gas in Mississippi to the Mississippi Power & Light Company. Moreover, in the words of Justice Reed, dissenting in *Interstate Oil Pipe Line v. Stone*, 377 U.S. 662, 69 S.Ct. 1264, 93 L.Ed. 1613, *Memphis Gas* was an "undecisive case" involving "disconnected local incidents." As pointed out above, *Memphis Gas* is not determinative of the constitutional issue raised by Louisiana's effort to lay a tax on Colonial's exclusively interstate business.

In *Spector Motor Service v. O'Connor*, 340 U.S. 602, 71 S.Ct. 508, 95 L.Ed. 573, where, a state corporation franchise tax imposed on an interstate transportation business was held invalid, *Memphis Natural Gas* was distinguished:

> "Our conclusion is not in conflict with the principle that, where a taxpayer is engaged both in intrastate and interstate commerce, a state may tax the privilege of carrying on intrastate business and, within reasonable limits, compute the amount of the charge by applying the tax rate to a fair proportion of the taxpayer's business done within the state, including both interstate and intrastate . . . The same is true where the taxpayer's business activity is local in nature, such as the transportation of passengers between points within the same state, although including interstate travel, . . . See also Memphis Natural Gas Co. v. Stone. . ." (335 U.S. at 610)

Here Colonial does not own any of the products which it transports; it makes no sales in Louisiana; and it makes no intrastate deliveries in Louisiana. We reiterate: The incidence of the Louisiana tax, however stated, is upon no intrastate commerce activities because there are none.

Colonial's situation is virtually identical to that of Plantation Pipe Line Company in the case of *State of Alabama v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So. 2d 549, certiorari denied 352 U.S. 943, 1 L.Ed. 2d 237, 77 S.Ct. 263. There Plantation was an interstate carrier of petroleum products through the state of Alabama and all of its property and all of its activities in the state were devoted exclusively toward the operation of its interstate facilities. The Alabama Supreme Court appropriately pointed out that:

> "It cannot be asserted that interstate commerce, to be immune from taxation, must be conducted in some sort of

vacuum without tangible property, personnel or incidental activities within the boundaries of the state. . ." (89 So.2d at 560)

There the state court, relying upon *Ozark Pipeline Corporation v. Monier*, 266 U.S. 555, 69 L.Ed 439, 45 S.Ct. 184, declared the state franchise tax unconstitutional. Subsequently, in *State of Alabama v. Transcontinental Gas Pipeline Corp.*, 271 Ala. 329, 123 So.2d 172, certiorari denied 364 U.S. 932, 5 L.Ed.2d 366, 81 S.Ct. 381, the Supreme Court of Alabama was again called upon to consider the constitutionality of that state's franchise tax as applied to a foreign corporation operating a natural gas transmission system extending from Texas and Louisiana to New York, operated under certificates of public convenience and necessity issued by the Federal Power Commission, which maintained compressor stations, metering stations and employees within the state necessary to insure the proper flow of gas. The state contended that because Transcontinental owned its gas and was not a common carrier and sold some of the gas to Alabama municipalities, the holding of the *Plantation* case did not apply. The Alabama Supreme Court found:

"Every activity carried on by appellee was found by the trial court to be a necessary, inherent and integral part of the interstate transmission of natural gas or the construction of facilities for such transportation."

The Alabama Court therefore concluded that Transcontinental was engaged exclusively in interstate commerce in Alabama and therefore, not subject to the Alabama tax.

In this case, the state has admitted that everything that Colonial has done since its entry into the State of Louisiana

has been in furtherance of its interstate business. It is fair to say, therefore, that every activity carried on by Colonial in Louisiana is "a necessary, inherent and integral part" of its interstate transportation of refined petroleum products. And Colonial's doing business in Louisiana in a corporate form is perhaps the most "integral" part of its interstate commerce activities in Louisiana. Clearly the carrying on of its interstate business in a corporate form is not a "local incident" separable from its interstate commerce activities, for it is the very framework by which that interstate business is conducted.[3] Colonial's corporate business form is the very "means and instrumentality" by which its interstate business is done. In no proper sense, therefore, does the conduct of its interstate business in corporate form constitute a "local incident" sufficiently separable from interstate commerce to support state taxation.

III.

AS TO LOUISIANA'S ENFORCEMENT AND COLLECTION PROCEDURES

The Collector has criticized some of our comments concerning Louisiana's statutory enforcement and collection procedures.

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[3] Even *Memphis Gas*, *supra*, and *Mid-Valley Pipeline Co. v. King*, 221 Tenn. 724, 431 S.W. 2d 277 (1968), relied on by the Collector recognized that in order for "local activities" of an interstate business to validly constitute the operating incidence of the franchise tax, such "local activities" must be "sufficiently separate from the interstate commerce" conducted by the taxpayer. As stated in *Memphis Gas*, they must be "events apart from the flow of commerce." Here we have no "event apart from the flow of commerce," for Colonial's corporate form is the business means by which the flow of commerce occurs.

Upon the basis of an unreported district court opinion and the denial of an application for supervisory writs by the Louisiana Supreme Court, the Collector (Page 28) claims that La. R.S. 47:1641 does not subject a taxpayer such as Colonial to criminal prosecution. The Collector argues that Section 1641 applies only to an agent of the state who collects a tax from a taxpayer and then fails to remit or account for such money to the state.

In Louisiana, the district court is the court of original jurisdiction and its opinions are unreported (La. Constitution, Article VII, Section 35). The denial of an application for supervisory writs by the Louisiana Supreme Court carries no rule of stare decisis. Neither does it indicate that the Court will act in the same manner on a subsequent application in a different case or upon the exercise of its appellate jurisdiction. The action of the Louisiana Supreme Court in this very case illustrates the point. In the first Colonial case, the Louisiana Supreme Court declined to review the judgment of the Court of Appeal, which declared the Louisiana tax invalid. In this case, the Court granted writs, noting that its refusal in 1969 does not carry the same weight as a precedent as it would had the case been decided by the Court after the granting of a writ. (Jurisdictional Statement, Page 30). See also *State v. Theard*, 212 La. 1022, 34 So.2d 248 and *State v. Pool*, 138 La. 228, 70 So. 107.

Thus, a different Louisiana district court might construe the Louisiana statute involved in a different fashion and might apply it to a taxpayer such as Colonial, subjecting it to criminal penalties. It should also be noted that if Section 1641 does not apply, then Section 1642 clearly does apply to Colonial.

That section provides for a $1,000 fine, one year in jail, or both fine and imprisonment for willful failure to file a tax return. That section is quoted in the appendix to this reply brief. Thus, whether the charge is under Section 1641 or under Section 1642, it constitutes a criminal charge against the taxpayer.

The Collector notes that in its original brief, Colonial refers to the provision of La. R.S. 47:401 as authorizing the state to obtain an injunction against further pursuit of Colonial's business if the tax is not paid. The Collector points out that Section 401 apparently applies only to the Louisiana occupational license tax—one of the few taxes which the Collector has not yet sought to impose upon Colonial.

We extend our apology to the Court and to counsel for this unintentional error in statutory citation.

The error in statutory reference, however, does not detract from the point which we sought to make in the original brief. Louisiana law does authorize drastic and summary collection procedures. For example, La. R.S. 47:1574 (which clearly does apply to the corporation franchise tax) authorizes the Collector to obtain a judgment by summary process, as a consequence of which injunction may issue, if sought by the Collector. That section further provides that the Collector's affidavit as to the tax due and all of the facts alleged by him "shall be accepted as prima facie true and as constituting a prima facie case, and the burden of proof to establish anything to the contrary shall rest wholly" on the taxpayer. La. R.S. 47:1561 authorizes "assessment and distraint" and pursuant to La. R.S. 47:1572 any person subject to distraint may

be required by the Collector to "surrender such property or rights of property of which he is in possession."

We reiterate then, that Louisiana does employ drastic and summary collection procedures in the enforcement of the Louisiana corporation franchise tax, including assessment and distraint, summary process, recordation of a "lien, privilege and mortgage on all the property" of the taxpayer, and criminal sanctions.

We again also assert that these drastic enforcement provisions point up the interference with the flow of interstate commerce which Louisiana's corporation franchise tax imposes when sought to be levied upon a business corporation engaged exclusively in interstate commerce. While the Collector's brief implies that failure to file a tax return and to pay taxes alleged to be due only brings forth a discreet request for payment, the Louisiana statutory provisions quoted in the Jurisdictional Statement and in our original brief amply demonstrate that Louisiana maintains the power and authority to shut down the flow of commerce should the corporation franchise tax not be paid. As such, the tax constitutes an effective condition precedent to a foreign corporation's continuing its interstate business activities in Louisiana.

We do not say that Louisiana's collection procedures alone render this excise tax unconstitutional. On the contrary, we submit that the tax, as levied, is an unconstitutional burden upon interstate commerce, no matter how enforced or how collected. These drastic collection procedures merely serve to illustrate the real and practical danger which the Louisiana franchise tax poses to the free flow of interstate commerce.

CONCLUSION

For the above reasons and for the reasons given in the original brief filed by Colonial herein, we respectfully ask that judgment be rendered reversing the judgment of the Supreme Court of Louisiana and declaring the Louisiana Franchise Tax Statute unconstitutional as sought to be applied against Colonial's exclusively interstate business.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, one of the attorneys for Colonial Pipeline Company, plaintiff-appellant herein, and a member of the Bar of the Supreme Court of the United States hereby certifies that on the ____ day of December, 1974, I served three copies of the foregoing brief on Joseph N. Traigle, successor in office to E. Lee Agerton, Collector of Revenue, defendant-appellee herein, by placing same in an envelope addressed to his counsel of record, Chapman L. Sanford, and Whit M. Cook II, State of Louisiana, Department of Revenue, Legal Division, P. O. Box 201, Baton Rouge, Louisiana 70821, and depositing said envelope in the United States post office at Baton Rouge, Louisiana, with first class postage prepaid.

Baton Rouge, Louisiana, this ___ day of December, 1974.

R. Gordon Kean, Jr.

APPENDIX

The following additional Section of Title 47 of the Louisiana Revised Statutes is involved in this case:

§ 1642. Criminal penalty for evasion of tax

Any person who wilfully fails to file any return or report required to be filed by the provisions of this Sub-title, or who wilfully files or causes to be filed, with the collector, any false or fraudulent return, report or statement, or who wilfully aids or abets another in the filing with the collector of any false or fraudulent return, report or statement, with the intent to defraud the state or evade the payment of any tax, fee, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of this Sub-title, shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than one year, or both.

History and Source of Law

Source:

Acts 1940, No. 265, § 33.